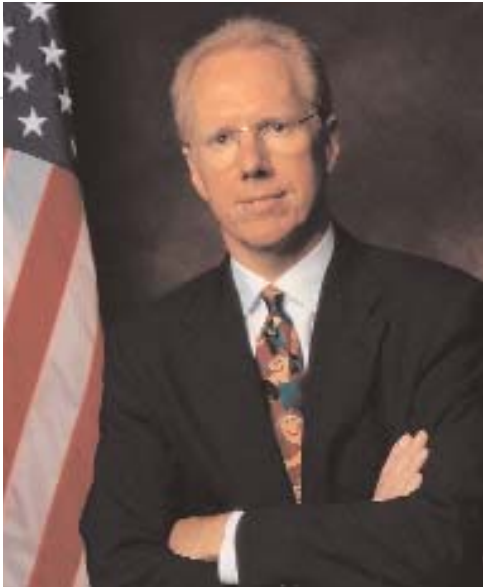


FROM THE DISTRICT ATTORNEY

Paul J. Pfingst



Today about 2,500 volunteers are serving alongside local police. Many of these volunteers are retired citizens who have found ways to continue contributing their time and talent to our community. Some have a special calling, such as the volunteer chaplains and crisis intervention counselors. Others, have a specific skill or interest, such as fluency in a foreign language or search and rescue. All are willing to help others in need.

These volunteers save the county and cities millions of dollars. SDPD estimates that its 1,000 volunteers donated 182,000 hours of service last year, the equivalent of \$2.5 million in services. RSVPs, volunteer patrols and Neighborhood Watch programs have also helped us achieve the lowest crime rate since the mid-1960s.

Most of all, they help law enforcement build stronger partnerships with the communities we serve. This teamwork breaks down the barriers between residents and officers. These partnerships are a natural extension of community policing.

When citizens serve alongside officers, they understand the challenges officers face. Likewise, officers are able to hear firsthand what issues are important to residents and gain valuable insight into community dynamics.

In this issue of the *Law Enforcement Quarterly*, Gayle Falkenthal writes about one of these reserve forces, the Sheriff's Dive Team. The team is typical of many of the volunteer forces: serving in the reserves gives them the opportunity to work on their diving skills while performing an important public service. The divers, like many of the volunteer forces, often put themselves in harm's way, or take on unpleasant assignments (like recovering bodies) without hesitation.

These volunteers are there when we need them. We have come to depend on them. They are now an indispensable part of San Diego law enforcement and they have our thanks.



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A publication of the San Diego County District Attorney

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Greg Thompson  
Assistant District Attorney



Measure For Measure

I once worked with a fellow who approached his job the way some people play the stock market. He invested his time and effort according to an expected return on his investment, calculated his effort measure for measure.

This meant he was willing to work as long as there was the promise of recognition or a prospect for promotion. But nothing ever seemed worthy of his best effort. Nothing engaged his passion.

For purposes of this column, I will call him Luke. As in “Luke Warm.” Luke’s favorite phrase was, “They don’t pay me to...” For example, if there was a difficult witness to deal with, he would say, “They don’t pay me to be a babysitter...” In the face of a tough case, he might say, “They don’t pay me to haul out the garbage...” A clever guy, Luke.

In fact, it was hard to know what “they” were paying Luke for, but to hear him tell it, he was under-utilized, under-appreciated, under-paid.

Luke was smart and appeared to me to have talent, but he also seemed determined to keep it to himself. His colleagues knew he could be counted on to pitch in – if it was convenient, involved him in no controversy (one can’t go out on a limb, you know) and didn’t put him on the freeway too late.

Recently, I ran into Luke. I hadn’t seen him for many years. When I asked him what he was doing, he

responded with his typical enthusiasm: “Oh, you know, same old, same old.”

He hadn’t changed. He just seemed smaller.

As I think of him – and think of

*“I never saved anything for the swim back.”*

the many years he has spent in his career – I can’t help but think that somewhere along the line he made a fatal miscalculation. By holding himself in reserve, by never engaging fully, he capped himself, deprived himself of any depth of experience, missed the personal satisfaction that comes from an all out effort.

Like a cautious investor, he played it safe.

Recently, I saw the movie Gattaca. Set in the ambiguously distant future, the film tells the story of a unique sibling rivalry. Anton – handsome, strong, brilliant – is the product of the best in genetic engineering; his success in life was virtually guaranteed before he was born by the

manipulation of the best genetic traits of his mother and father.

By contrast, Vincent, played by the film’s star Ethan Hawke, is a love child, the product of his parent’s passion, a natural brew of imperfections trying to make his way in an unsympathetic world. We’re pulling for him all the way.

During their boyhood, the rivalry plays itself out in a game. The two boys dive into the ocean and swim out as far as they dare, knowing they must have enough strength to swim back to shore, otherwise they will drown. The first to turn back is chicken, a coward, the loser. Time and again, Anton and Vincent take to the water. And each time Anton’s engineered strength wins.

Then, one day Vincent turns the tables: when the contest is over and they both lay exhausted on the shore, Vincent has beaten out his genetically superior brother. It is the pivotal moment in their lives (and the movie). When the two brothers later confront one another as adults, Anton demands to know how he was beaten.

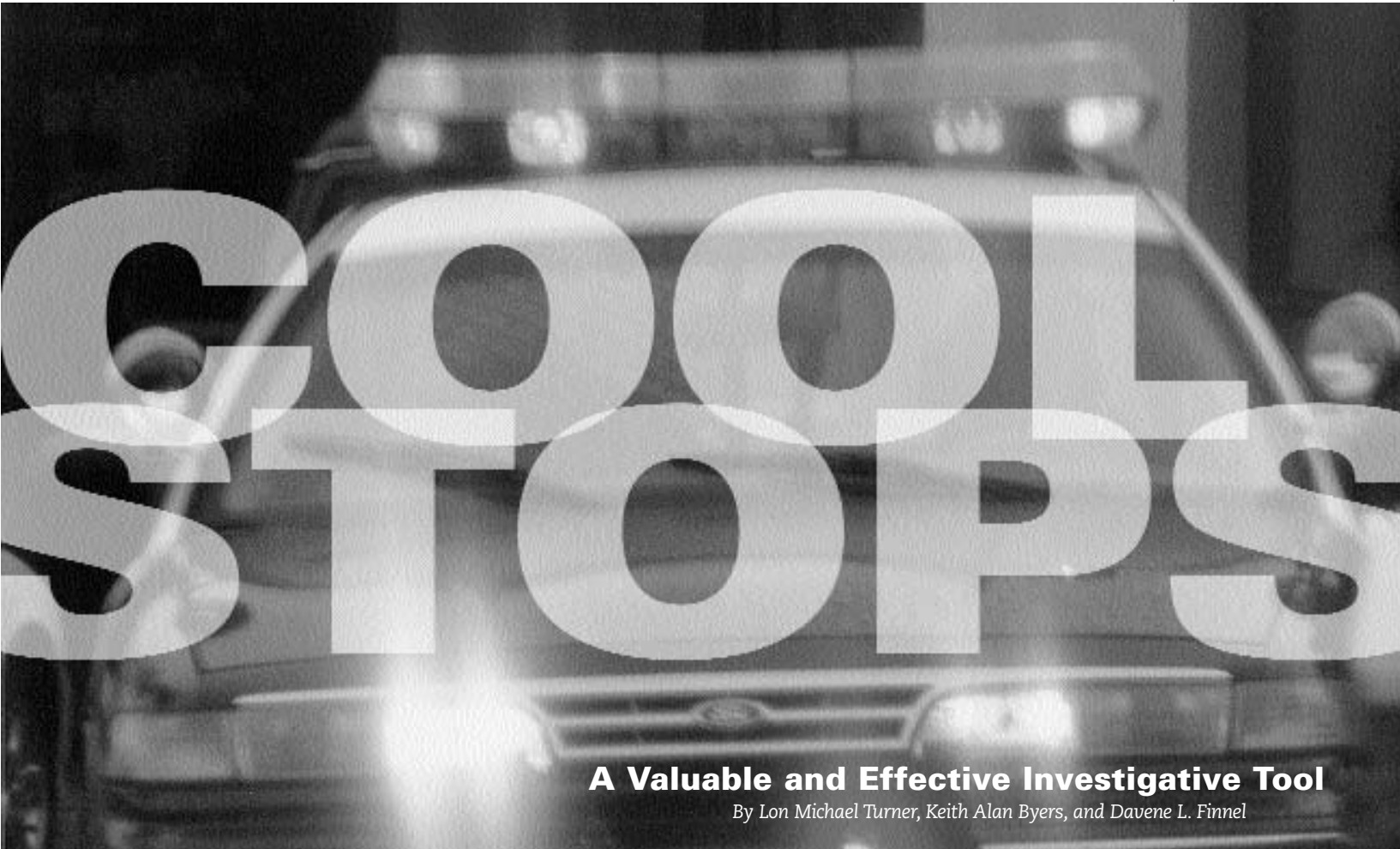
“You want to know how I did it?” Vincent exclaims. “This is how I did it, Anton. I never saved anything for the swim back.”

This is a lesson that is costly to apply: to spend yourself completely, to hold nothing back, nothing in reserve. It involves tremendous personal risk; it’s not safe. But, when I consider the cost of tepid commitment, of lukewarm effort, I realize it is even more costly to learn the lesson too late.

LEQ

Agents of the FBI, DEA and the Chula Vista Police Department had been conducting surveillance near the house of a major drug trafficker, located in an exclusive San Diego neighborhood. The

several hours of shopping, the target subject finally left and began driving southbound on the freeway. At that point, a uniformed Chula Vista police officer conducted a Cool Stop after being advised that the target subject



agents learned an unidentified, but very significant co-conspirator planned to visit the drug trafficker’s home later that day. Knowing this same co-conspirator had been involved in the shipment of substantial quantities of illegal drugs over the course of several months, the investigating agents did not want to miss the opportunity to finally identify this co-conspirator.

Approximately two hours late (but on time according to “doper” time), the co-conspirator arrived for his meeting with the drug trafficker. At the conclusion of a two-hour meeting, the co-conspirator left the residence. A uniformed officer in the area was requested to conduct a Cool Stop to identify this individual. Before the assistance of a uniformed officer could be secured, the co-conspirator went to a local shopping mall. After

did not have a visible front license plate. Subsequently, this co-conspirator was identified and later indicted on federal drug trafficking charges.

A Cool Stop is a traffic stop based upon probable cause that a traffic violation has occurred, but with the ulterior motive of covertly gathering information needed in an ongoing criminal investigation, apprehending a suspect who is wanted for having committed an unrelated criminal violation, or investigating an unrelated offense. Because critical evidence can be uncovered without a warrant, Cool Stops are both a valuable and effective investigative tool.

Since federal law enforcement agencies are not charged with enforcing traffic laws or the Vehicle Code, uniformed police officers, sheriff’s deputies, and highway



patrol officers are periodically asked to play a small but significant role in ongoing federal criminal investigations. Cool Stops, however, can involve either federal law enforcement officers, plain clothes local law enforcement officers, or a combination of federal and state task force officers working with uniformed, state and local law enforcement officers assigned to marked patrol units.

Although the individual patrol officer who is asked to conduct a Cool Stop might never know exactly how the assistance provided eventually impacts a complex investigation, every uniformed officer should understand the key role they are being asked to play. It is equally important the uniformed officer operate within legal parameters, while also being mindful of the objectives of the Cool Stop.

LEGAL CONSIDERATIONS

Several United States Supreme Court decisions grant police officers broad and various powers over motorists. Consequently, the uniformed officer responsible for conducting the Cool Stop is in a key position to provide valuable intelligence information to agents or officers conducting an investigation.

In one such case, *United States v. Whren*, 517 U.S. 806 (1996), a unanimous Supreme Court held that “as a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” The Supreme Court also explained the constitutional reasonableness of a traffic stop does not depend upon the “ulterior motives,” “actual motivations,” or “subjective intentions”



*This article is intended to educate uniformed officers about Cool Stops, while providing tips to detectives, agents, and other criminal investigators who might want to utilize Cool Stops as an investigative tool.*

*On the other hand, this article is not intended to address the use of traffic stops as a means to covertly and independently intercept known or suspected drug or money loads during the course of ongoing investigations. Circumstances involving these traffic stops are inherently much more complex than typical Cool Stops, as additional and significant issues related to protecting an ongoing investigation are involved.*

of the officer conducting the stop. The temporary detention of a motorist based upon either reasonable suspicion or probable cause to believe a traffic law violation has occurred does not violate the Fourth Amendment’s prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective. In other words, a uniformed officer can be called upon to observe and stop a motorist as soon as a traffic violation occurs as a means to assist an unrelated investigation.

PRACTICAL CONSIDERATIONS

Since a Cool Stop most likely involves either different law enforcement agencies (for instance, an FBI/ DEA drug task force and a uniformed San Diego police officer) or officers within the same department who are not accustomed to regularly working with one another (for example, a plain clothes Chula Vista Narcotics Enforcement Team and a uniformed CVPD patrol officer), everyone involved must have a good understanding of what should and should not happen during the Cool Stop. Therefore, it is helpful if the uniformed officer is familiar with the various practical considerations surrounding a Cool Stop.

1. Personal Safety

The personal safety of the uniformed officer always takes precedence. All objectives of the stop are secondary. At any time during the execution of the Cool Stop, the officer should request “cover” or the assistance of another uniformed officer if necessary. At a minimum, an officer should err on the side of caution to ensure personal safety. The officer also should keep in mind the typical Cool Stop involves either a suspected or known (but not formally identified) criminal or criminal associate. Also, the officer should verify whether a surveillance team will be observing the stop and providing backup should the situation escalate.

The officer must be given information as to whether the driver and occupants are generally, or even possibly, considered to be armed and dangerous. Cool Stops should almost never be conducted, however, if one of the participants is known to be armed and dangerous.

Regardless, a Cool Stop might still be conducted when it is the best way to approach and apprehend a potentially dangerous suspect. For instance, the officer

might lead the subject to believe he is only being detained for a routine traffic stop and temporarily handcuffed for officer safety. This type of Cool Stop requires extensive preplanning, more than one uniformed officer, and the assistance of a complete surveillance team.

2. Know The Objectives Of The Stop

The uniformed officer must know the objectives prior to initiating the Cool Stop. Is the stop being conducted simply to identify someone? Which suspects in the vehicle should be identified? Is the traffic stop really a ruse being conducted to make a non-confrontational stop and arrest of an individual wanted in another matter? During the stop, will the surveillance team attempt to take photographs of the occupants of the vehicle? Does the requesting agency want the occupants arrested if probable cause to do so is developed by the officer during the stop? Should the vehicle be searched if the officer develops probable cause? Should the officer obtain consent to search the vehicle?

3. Know The Law

When making the decision to attempt a Cool Stop, as well as when forming the probable cause needed to justify the traffic stop, both the requesting agency and the uniformed officer are reminded not to consider the race of the driver or occupants of the target vehicle. Although the U.S. Supreme Court has permitted the use of suspect profiles as a legitimate law enforcement tool, both the federal Constitution and case law prohibit the selective enforcement of the law based on considerations such as race.

Further, the uniformed officer must develop his own independent probable cause to stop the target vehicle (except in those cases involving an arrest warrant and the planned arrest of that subject). Likewise, the officer must develop independent probable cause to search the vehicle whenever consent to do so is not provided. As a result, the uniformed officer should be provided information about the underlying investigation strictly on a need-to-know basis.

The officer must be able to articulate probable cause based upon factors separate and distinct from information developed during the course of the ongoing investigation.



Keith Alan Byers is a Special Agent and attorney assigned to the San Diego Division of the FBI where he serves on an Organized Crime Drug Enforcement Task Force.

Cool Stops

This is not to say that visible violations of the Vehicle Code, such as a broken taillight or the absence of a front license plate, cannot be brought to the officer's attention.

Prior to conducting the stop, discuss whether the driver or occupants should be asked to stay in the vehicle or told to exit the vehicle. The law gives the officer the option. If the occupants exit the vehicle, the surveillance team will be able to better observe and monitor them, as well as react quickly should a threat be posed to the officer. Further, having the occupants exit the vehicle will also make photographing the subjects easier. Once the stop is initiated, however, the uniformed officer must re-evaluate the situation and determine which option represents the safest way to proceed.

Also, never forget: the Cool Stop is based on a temporary detention related to the commission of a traffic violation. The stop should be brief unless legal grounds are developed that justify extending the duration of the stop or the driver consents to additional questioning.



Davene L. Fimmel is a Special Agent and attorney assigned to the San Diego Division of the FBI where she serves on an Organized Crime Drug Enforcement Task Force.

4. Debriefing Location

A debriefing should follow the termination of every Cool Stop and the officer should be given a rendezvous location before initiating the stop.

5. Establish A Communication Link

The assistance of a uniformed officer will be easier to secure if the agency requesting the traffic stop has a traditional police radio, as well as a familiarity with the proper radio procedures of the local police department. Additionally, the use of the police radio will enable the requesting agency to directly communicate with the responding uniformed officer prior to and during the Cool Stop. The requesting agency, however, should keep in mind that any communications occurring over the police radio will not be encrypted and possibly subject to audio recording by the assisting police agency, as well as monitoring by interested third-parties.

If a police radio is not available, the requesting agency will need to make physical contact with the uniformed officer prior to the stop. At that time, the officer should be provided with one of the other agency's encrypted radios, Nextels, or cellular telephones and

instructed in the use of the provided equipment. The case agent or surveillance team leader should communicate with the officer on a predetermined radio channel, preferably separate from the rest of the surveillance team.

6. Some Cool Stops Are Reactive

Whenever possible, the assistance of the uniformed officer should be pre-arranged and he or she should be briefed prior to the stop. The agency or team requesting a Cool Stop may not always be able to provide the uniformed officer with advance notice. In some situations, these stops are very reactive. For example, an unknown subject might suddenly pop up from the back seat or jump into a vehicle with a previously identified subject. The surveillance team may want to identify the subject before he exits the vehicle. In this situation, the assistance of a uniformed officer might be suddenly requested.

7. Locating A Moving Vehicle

In a reactive Cool Stop, the uniformed officer probably will be attempting to locate a moving vehicle and the accompanying surveillance team. Since the target vehicle is moving, the surveillance team will have difficulty communicating the exact location of the vehicle at all times with 100 percent accuracy. There may be a slight delay as the information is relayed from the surveillance team leader to the uniformed officer. This is an important consideration. The officer in the marked unit wants to avoid speeding by the vehicle only to hit the brakes as he realizes he just passed the target.

8. Location For The Stop

Conduct the stop in an accessible location whenever possible. This will aid the surveillance team in observing and photographing the stop. Most importantly, the surveillance team will be able to respond quickly should the driver or passengers begin to pose a threat to the uniformed officer.

For instance, an officer should not conduct the stop on the shoulder of a freeway or on the side of a busy road. Instead, he should tell the driver to pull off the freeway at the nearest exit or have him pull into an accessible and easily visible parking lot.

9. Issuing A Warning Or Citation

If possible, after the officer observes a traffic violation but before initiating the stop, the officer should be told

whether to issue a simple warning or an actual citation for the observed traffic violation. Depending on the observed violation, the issuance of a citation, or in the alternate, a warning, might make the stop less likely to arouse the suspicion of the target.

The decision to merely issue a warning does have one unique and incidental benefit. Essentially, it ensures the encounter is officially over. There is no future risk to the ongoing investigating that might be compromised during a subsequent in-court challenge to the issuance of the traffic citation.



10. Write Down All Pertinent Information

During the stop, the officer should write down any needed information. In particular, all biographical data on the subject's license should be written down. The officer also should record the person's alien and passport numbers if such documents are presented for inspection. Too much information is always better than not enough.

11. Pay Attention To Sights, Sounds And Smells

During the stop, the officer should pay attention to what he sees, hears, and smells. How did the subject act

during the stop? What did the subject say? Did the subject have any discernible accent or speech pattern? Where did the subject say he was coming from or going? Were there any cellular telephones in the vehicle? Were any long distance or prepaid cellular telephone calling cards visible? Was the subject wearing a pager? Were there air fresheners in the car being used as a potential way to mask the smell of drugs? Was there only a single key on the ignition key ring, possibly indicating the car does not actually belong to the driver and that it is being used for drug trafficking or other criminal activity? Were there suitcases or other closed containers in the vehicle possibly being used to transport currency or illegal drugs?

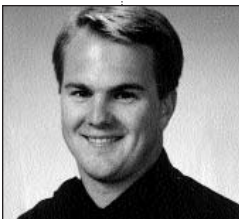
12. Maintain Secrecy During And After The Stop

During the Cool Stop, the officer should outwardly appear to act just like he or she would during a routine traffic stop. In particular, the officer should not be surprised or react if he notices members of the surveillance team or if he notices he is being photographed during the stop. Whenever a Cool Stop is being used to covertly collect intelligence information, the uniformed officer obviously should not advise the driver or the occupants of the detained vehicle regarding the identity or involvement of the requesting agency.

If the uniformed officer has been given a radio or Nextel to communicate with the surveillance team members during the stop, he must protect their radio traffic and ensure he is not standing in close proximity to the subjects when communicating with the case agent or surveillance team leader.

Furthermore, the officer should not refer to the subjects by name when communicating with the surveillance team. Likewise, the surveillance team members must be conscious of their own radio traffic if they are operating on the same radio frequency as the uniformed officer. Subjects might inadvertently overhear portions of their radio traffic. As much as possible, all participants in the Cool Stop should refer to the subjects by pre-designated names or other pre-determined identifiers such as "S-1" (Subject One) or "S-2" (Subject Two).

The assisting uniformed officer should keep the details of the stop confidential, preferably even on a need-to-know basis with fellow officers. Depending on



Lon Michael Turner is an Agent with the Chula Vista Police Department assigned to a multi-agency Organized Crime Drug Enforcement Task Force (OCDETF).

Cool Stops



Cool Stops the identity of the agency requesting the traffic stop, the officer may have been involved in a sensitive, classified, or even Top Secret matter.

**13. Make Contact Before Terminating The Stop**

The officer should contact the requesting agency before terminating the stop to ensure the objectives of the stop were met. Moreover, advance notice will enable



the officer to tell the surveillance team that the stop is about to be terminated and the vehicle allowed to depart.

**14. Resist The Temptation To Drive By**

Officers not involved in the stop should not drive by the area out of curiosity. Everyone needs to remember this is a Cool Stop. The responding officer as well as the other officers in the surrounding area are doing their best not to arouse the suspicions of the subjects by “heating up” the stop. If the stop does get “heated up,” potentially severe and adverse consequences could result for both the patrol officer and the underlying investigation.

**15. Motivation Behind The Stop**

Uniformed officers should always keep in mind that what might seem like an inconvenient request from another agency, might actually be an attempt to identify a major drug trafficker, potential spy, or terrorist – anything is possible.

**16. Credit Where It’s Due**

When a successful investigation is completed, be it the next week, the next month, or even the next year, the requesting agency should take the time to share the news, and the glory, with the patrol officer who played a small but instrumental part in the case. The requesting agency should also send letters of appreciation to the officer’s superiors in order to recognize a job well done.

**CONCLUSION**

Although many in the law enforcement community might not be familiar with the use of Cool Stops, virtually every law enforcement agency could benefit from the it’s use. At the same time, the success of this investigative tool depends upon the joint efforts and cooperation of federal, state, and local law enforcement agencies working together to fight the war on crime.

LEQ

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**Paul J. Pfingst**  
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**Denise Walker Vedder**  
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**Blaise Nauyokas**  
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**Greg Thompson, Mike Carleton,  
George W. Clarke, Robert C. Phillips**  
columnists

**Keith Alan Byers, Davene L. Finnel, Hector Jimenez, Gayle Falkenthal,  
Susan Mazza, Catherine Stephenson, Jim Treece  
Lon Michael Turner, Mychal Thornton, Brian J. Whitbread**  
contributing writers

**Sanae Yanagawa**  
design/photo illustration

**Marty Martins**  
special advisor

**Steven J. Casey**  
editor emeritus

CIVIL LIABILITY

Mike Carleton

Civil Liability: The Good, The Bad & The Ugly

An interesting and diverse set of cases are offered for your consideration. Two are of particular note. One represents a relentless effort by an officer wronged by a citizen. The court refused to use an old rule to bar such recovery. The federal case has even farther-reaching applications to benefit all officers involved in pursuits. It may, however, only apply to federal cases and there may be separate theories of liability the plaintiffs can raise in

state court. The other is a case in which some communication within a department could have possibly avoided this problem (although based on what I know about large departments, I can easily see this type of situation happening again). Hopefully, one of you, dear readers, can figure out a procedure to prevent such a calamity. If you do, or already have such a procedure, please contact me so that I may share it in the next LEQ.

The Good

Cops suit against businessman upheld – Firefighter’s Rule held inapplicable.

Officer Brooks, a longtime LAPD veteran, sued a Van Nuys businessman for battery, after a criminal jury hung on similar charges. It seems that Officer Brooks was assigned to light duty due to problems associated with a heart condition. In May 1990 (is it not a mystery how long justice seems to take!) his superiors asked him to contact local businesses in Van Nuys to solicit support for the LAPD’s Annual Charity-Celebrity Golf Tournament (my kind of charity) by taking ticket orders. He was in full uniform, with gun, badge, etc.

(Call me crazy, but I don’t think any of you should engage in this type of solicitation without double checking your department’s policies, and receiving approval from a high level officer. I think this type of solicitation is prohibited by most, if not all, departments.)

When he entered Mr. Felknor’s business, an engineering corporation, he chatted with a receptionist. Felknor entered the foyer and accused Brooks of being a “phony scam artist,”

claiming he had seen stories about people posing as cops to solicit funds. Although he politely denied these allegations, Officer Brooks quickly realized that no donation would be forthcoming from Felknor. As he turned to leave, Brooks was pushed and then slugged and grabbed by Felknor. They tumbled out on the sidewalk with Brooks yelling at Felknor that he was now “under arrest.” Felknor continued to punch Brooks as citizen witnesses called LAPD for help.

After the criminal jury hung, Officer Brooks obtained the help of the LA Police Protective League and sued for damages. In defense, Felknor’s counsel argued that Brooks’ suit was barred by the “Firefighter’s Rule”, a judge-made rule that limits civil suits by law enforcement officers and other public safety employees. In essence, the theory is that injuries inherently associated with the job are covered through other means and officers ‘assume the risk’ when they become officers.

Officer Brooks’ lawyer, however, successfully argued to the trial judge that this rule does not cover

intentional injuries to officers. The trial judge and subsequently the appellate court agreed. The jury award of \$10,210 in general damages and \$16,000 in punitive damages was affirmed. *Brooks v. Felknor. Thanks to Michael P. Stone, and PORAC Law Enforcement News, June 1999, for bringing this to our attention.*

The Better

Police officers are insulated from constitutional attack for injuries caused while justifiably chasing a criminal suspect.

In a refreshing display of common sense, the Ninth Circuit of the United States Court of Appeals has upheld the granting of a summary judgment for the police involved in a high speed pursuit. Officers were chasing a reckless driver turned V.C. 2800.2 CVC, when the miscreant crashed into an innocent couple’s vehicle, severely injuring both of them. The couple sued L. A. County and the officers involved in the pursuit in federal court on the theory they were deprived of their 14th Amendment due process rights.

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The pursuit began when officers saw Scott Reed driving 60 miles per hour on busy Santa Monica Blvd. They first followed him and saw him continue to drive recklessly. Police activated their light and siren and gave chase when he failed to stop.

The initial officers dropped back and another officer took up the pursuit when Reed crashed into another vehicle. The entire pursuit lasted about a minute, and the officers' cars never exceeded 45 miles per hour.

Following a fairly recent decision by the United States Supreme Court in *Lewis v. Sacramento County*, 523 U.S. 833 (1998), the court ruled that when injury or death results from a high-speed police chase, only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." The Ninth Circuit had to decide whether that ruling applied to innocent parties as well. The *Lewis* case involved the death of one of the persons being pursued.

In their decision, justices focused on language used in the Supreme Court case that officers must make a "split-second" decision whether to chase a suspect. The officers must balance safety of other drivers with the need to stop such suspects to demonstrate that

running from the law is no way to freedom against the threat to everyone from such pursuits. The court decided the rule applies to innocent parties as well as those pursued. Unless the pursuing officers conduct "shocks the conscience" the cause of action does not arise.

The court found there was no evidence to give rise to such a finding and upheld summary judgment. *Onossian v. Sherman Block, et al.*, No. 97-56169.

**The Ugly**  
*Officers search residence for the second time in four days, injure the occupant and find no evidence. Jury awards \$130,000 to plaintiff.*

Under the heading of the "the right hand not knowing what the left hand is up to," we have this case. It seems that a Mr. Forbes allowed a parolee to live at his Anaheim house. And, believe it or not, one day, Forbes comes home to find his car and parolee missing. He reported this to his father who is the actual owner of the car. Father reports the theft to the Anaheim PD.

The parolee is caught shortly thereafter. He says he had permission to use the car. When confronted by officers, Forbes "kind of" admits that he had given the parolee permission, but did not want his dad to know. A couple of months later, two motor-cycle drivers pull up in front of

Forbes' house, pull out semi-auto handguns and start pumping rounds into the house. Officers respond to neighbor's calls and get consent from Forbes' to search his house. They find some guns (no crime), which Forbes' says are not his, and not much else.

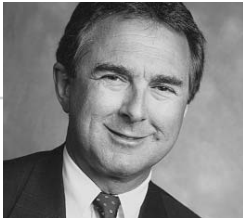
Coincidentally, at about the same time, the same Mr. Forbes was under investigation by Anaheim PD's auto theft unit. He was suspected of running a chop shop out of the garage at his house. An Anaheim detective dutifully prepared an affidavit and got a warrant to search the house, signed the day following the first search. I am sure you can guess that the detective was totally unaware of the search of the entire house and garage the day before and naturally did not inform the magistrate.

There was a SWAT entry and officers jumped Forbes. He claimed all sorts of injuries and pain as a result. He alleged that the warrant should not have been issued and that excessive force was used. The jury returned a verdict in favor of Mr. Forbes in the amount of \$130,000. **LEQ**

*Mike Carleton is a Deputy District Attorney and Chief of the DA's El Cajon Branch. He served for several years as the DA's liaison to local police agencies. He can be reached at (619) 441-4520.*

ON FORENSICS

George W. Clarke



Rapist Identified Six Years Later  
DNA Databank Pinpoints Attacker Of Virginia Woman

Competing interests and limited funding – a familiar situation facing Congress and state legislatures around the country. Sometimes, however, the safety of the community must come first.

State and national databases of DNA profiling information on prison and jail inmates are relatively new. Despite that, all 50 states now have statutes requiring that defendants convicted of violent crimes provide a sample of their blood or saliva.

These samples may assist law enforcement in solving more crimes when suspects can't otherwise be identified in the regular course of investigations.

The Crime that Couldn't Happen

Debbie Smith lived in what she always believed was one of the safest environments possible. She resided with her husband – a police lieutenant – in a beautiful neighborhood in Williamsburg, Virginia, one of the safest cities in America.

At 1 p.m. on May 3, 1989, Debbie Smith was home. She was in the middle of cleaning house, doing the laundry and baking a cake for dinner with friends that evening. A light rain was falling outside.

Her husband was asleep upstairs after having worked more than 24 hours straight. He had worked the night shift and then had a court appearance that morning.

She noticed the clothes dryer was making an unusual noise, so

she went outside to check the vent. When she returned, Debbie decided to leave the back door unlocked. She was going to return right away to take out the trash.

But within moments, a stranger entered the unlocked door and changed her life forever. The masked man forcibly took her to a nearby wooded area. He blindfolded, robbed, and repeatedly raped her.

The crime took less than one hour but deprived Debbie of both her innocent outlook on life and her freedom. The stranger's voice was deafening to Debbie: "Remember, I know where you live and I'll come back if you tell anyone."

The First Minutes

But Debbie did tell someone. She returned to her

home, ran upstairs to where her husband was asleep and woke him. "He got me, Rob. He got me," she told her husband.

Debbie begged her husband not to call the police, and pleaded with him not to tell anyone. She truly believed her attacker would return and kill her.

Debbie's husband, a police officer, couldn't forget what the stranger

"REMEMBER, I KNOW  
WHERE YOU LIVE AND  
I WILL COME BACK IF  
YOU TELL ANYONE."



**Burglaries are DOWN:** Reported burglaries have declined by 46% in the County of SD  
1988 - 1998 California Attorney General Report

Arrests have  
declined by  
26% in the  
County of SD

Arrests have  
declined by  
45% in the  
City of SD

Males  
arrested  
declined  
32%

Boys  
arrested  
declined  
15%

Females  
arrested  
increased  
5%

Girls  
arrested  
increased  
26%



had done to Debbie. He also convinced Debbie of the importance of going to the hospital. All she wanted to do was take a shower and wash away all traces of the man's violent attack.

The hospital visit proved almost as degrading as the crime. Debbie was questioned, probed, plucked, scraped and swabbed, but was thankful for her husband's insistence on that trip to the hospital. The reason: valuable evidence was collected that eventually put her rapist behind bars forever.

The Devastation

For the first time in her life, Debbie felt no reason to live. The love of her family and friends wasn't enough to counter the devastating effects of her violation. Even her faith in God was shaken.

The pain and the fear were endless, invading both her waking hours and her dreams.

On many occasions after the rape, her husband woke up in the middle of the night to the sound of Debbie's horrible screams. She knew that she could not live the same way. She thought it seemed like her only alternative was death.

People were always

reminding Debbie "At least you're alive!" Although she was alive physically, Debbie had died inside. She actually cursed her attacker for not taking her life and relieving her of the constant and excruciating pain.

Debbie's attacker had left her and each and every member of her family a victim. He touched emotions within them that they had never felt before. Rage and anger filled her son. Debbie's daughter was afraid to walk outside their home after dark.

Their home, which had always been filled with love and laughter, became a house of fear and guilt. But Debbie and her family weren't the only victims that day. Every

person who heard about this horrible incident felt the effect of the crime. They no longer felt safe. Everyone in the community felt invaded.

Waiting for Word

Debbie waited daily to hear that her attacker had been found, but the news didn't come. Days became weeks. Weeks turned into months. Months became years. She lived in perpetual fear of his return, hearing his promise in her head, "I know where you live and I will come back and kill you."

The Williamsburg Police Department followed every lead and every clue, yet came up empty-handed. Debbie and her husband installed a security alarm system in their home, panic buttons throughout their house, and even one around Debbie's neck. A fence was built around their backyard, including motion detectors.

Debbie began to wonder how she was ever going to be able to really live again. For more than six years, she simply existed, trying to live her life as normally as she could.

The Shocking News

On July 26, 1995, Debbie's husband walked into their living room. He handed Debbie a composite drawing of her attacker that he had carried with him ever since the crime. He told Debbie they could throw the drawing away – they weren't

going to need it ever again.

Debbie's heart sank. A Virginia State forensic scientist had discovered a match between the attacker's DNA and a databank maintained by the State of Virginia. Her rapist was in jail and was serving time for kidnapping and robbery. He couldn't come after Debbie anymore. He was no longer a threat.

For the first time in more than six years, Debbie could feel herself breathe. She felt validated. Suddenly, a real name and a real face now went with her nightmare. Finally, she could stop looking over her shoulder. No longer did she have to drive her car in circles, hoping a neighbor would drive by so she could summon the courage to get out of her car and go into her own home.

Debbie learned that the man had been placed in jail only months after he had torn her life apart in 1989. She lost those six years of her life because of the backlog of DNA samples in the Virginia State laboratory system.

DNA Databases

All 50 states and the federal government have statutes requiring convicted offenders to provide samples of their blood or saliva for DNA identification purposes. For example, California demands that all defendants convicted of felony assault crimes (including sex offenses, murder and other violent acts) contribute both blood and saliva, to enable DNA profiling of those samples and entry of those

results into both state and national database systems.

Virginia, in contrast to California, requires all convicted felons to provide samples for analysis and data banking. With tens of thousands of samples from inmates in Virginia

Department of Justice in Fresno. The reason: not enough money or analysts have been provided to keep pace with the influx of samples from new inmates.

The situation, ironically, has been made worse by improvement



Norman Jimmerson was already in prison serving a 161 year term for abducting and robbing two women when a DNA match determined he was the man who raped Debbie Smith six years earlier. The Virginia DNA databank found a random match between semen recovered from the scene and a blood sample from an inmate who had entered the prison system. Although all 50 states require DNA samples from sex offenders, Virginia is one of only six states that requires testing for all convicted felons. Nationally, there are 500,000 inmate blood samples collected but not analyzed due to lack of funding.

prisons and jails, the laboratory couldn't nearly keep pace in 1989 and the early 1990s.

Led by Dr. Paul Ferrara, director of the Virginia State laboratory system, a concerted effort was begun to type as rapidly as possible samples taken since the late 1980s from Virginia felony defendants. By 1995, enough profiles from those samples had been developed to start solving cases without suspects.

Debbie Smith's rapist was convicted of the kidnapping and robbery he committed shortly after assaulting her. He was sentenced to prison. Once he was sent to prison, he provided a sample of his blood. Finally, the sample was typed and the match was made.

Databases and California

Unlike Virginia and a few other states, California is not actively pursuing DNA data banking. More than 100,000 samples from qualifying convicted offenders sit in freezers at a facility of the state

in DNA technology, leading to greater success with smaller crime scene samples. But almost 40,000 of the samples have already been profiled and databased – using a technology that is outdated and can't "communicate" with the systems now used by nearly all laboratories around the world.

Further complicating the problem are the difficulties encountered in collecting samples from all eligible defendants.

Prison and jail inmates are easy to locate. Defendants who are released from court or serve relatively short local jail sentences are another matter. Estimates of the number of "owed," but not collected, samples nationwide total more than one million.

The morale of Debbie Smith's tale is clear: federal and state governments must make DNA typing of convicted criminals one of their top funding priorities. LEQ



Debbie Smith



Robert Phillips



Armed with an arrest warrant, police officers in Anaheim, California, found Richard Arnold Summers lying in bed in his small trailer. Awakened by the officers, Summers submitted without incident. After being allowed to put on his pants, he was handcuffed and led to the trailer door some 10 feet away. A female friend, who had let the officers inside, was the only other person present. A third resident was reportedly in a nearby laundromat.

As Summers was about to be taken from the trailer, one of the officers lifted the pillow from the bed and found an illegal sawed-off shotgun.

Once the other resident had been located and the scene secured, the shotgun was photographed, fingerprinted and seized. A total of 10 minutes had elapsed between defendant's arrest and the eventual removal of the shotgun.

Lawful search? Certainly. But the route we must travel to reach this simple conclusion is interesting and possibly something we take for granted. So let's analyze it.

First, looking under the pillow was clearly a search; but one conducted without benefit of a search warrant or even any probable cause to believe that there was anything there to search for. How then can this search be lawful?

### The *Chimel* Decision

The answer lies in another case, which occurred more than 30 years earlier and not too many miles from Richard Summers' trailer. This situation involved a person named Ted Steven Chimel who was arrested in his home on a burglary warrant by Santa Ana police officers. When an uncooperative Mr. Chimel rejected the officers' request for a consent search of his residence, he was told they were going to do it

going to be necessary before police may lawfully rummage around in our homes. *Chimel* carves out a very limited exception to this rule.

*Chimel* deals exclusively with the aftermath of a lawful arrest. Following an arrest, the arresting officers are allowed to conduct a warrantless search of the arrestee's person and the area within his or her "immediate control." The purpose of this search is specifically to remove any weapons the

arrested person might use to resist arrest or effect an escape, and to seize any evidence on the arrestee's person to prevent its concealment or destruction. This searchable area has at various times been referred to as the

"lunging" or "grabbing" area. The *Chimel* rule itself has also been called the "arm's-length rule."

How far this "lunging" area really extends is always subject to debate and depends upon the circumstances of the individual case. But the Supreme Court has tried to give us a little guidance by simply describing it as "the area from which the subject might gain possession of a weapon or destructible evidence."

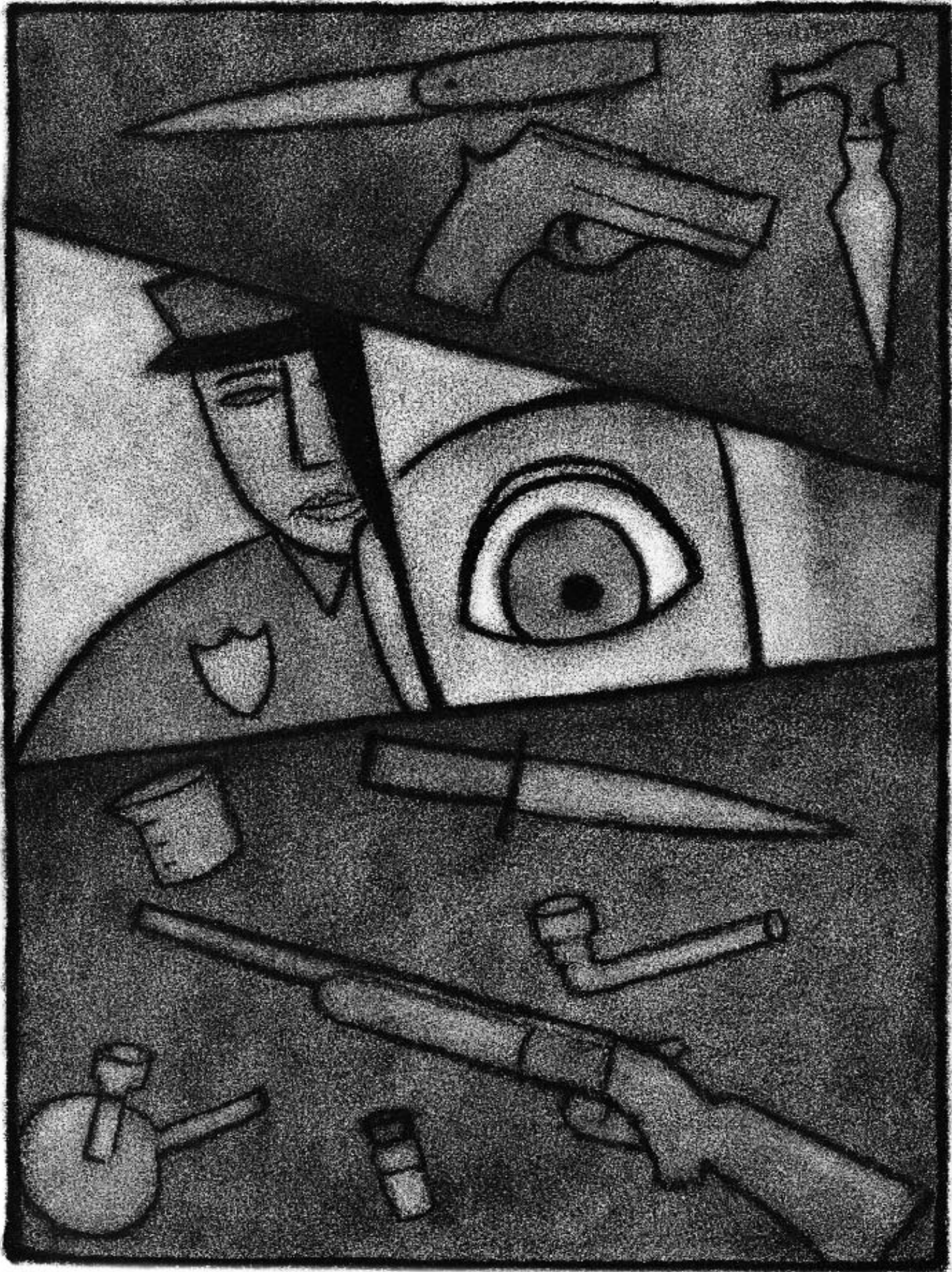
This rule is a windfall for law enforcement because there is no requirement that there be any independent probable cause to believe seizable evidence is within this lunging area, and certainly no requirement that a warrant first be

anyway. A 45-minute search of the entire three-bedroom house resulted in the recovery of stolen property from various rooms.

In a decision by the United States Supreme Court, Chimel's conviction for burglary was reversed. A divided court settled a long history of conflicting decisions and established some reasonably definite guidelines for what we now know as a "*Chimel* search incident to arrest."

The premise behind this is that we all have some very important privacy rights in certain areas, not the least of which is our home. Recognizing this, the general rule is prior judicial approval in the form of a search warrant authorizing an intrusion into this private area is

## Search Incident To Arrest: How Far Can You Go?





obtained. It is the fact of the arrest alone that justifies the search.

**Removing the Suspect from the Scene: A Two Prong Test**

Now wait a minute! When Richard Summers’ bed was searched and his shotgun seized, he was in handcuffs some 10 feet away, being led away by a police officer. How could he have possibly lunged for the gun under these circumstances?

The majority opinion in the Summers case attempts to justify the search under the pillow by observing that the scene was not yet secure. Summers’ girlfriend

was present and the exact whereabouts of the other occupant of the trailer was still unverified. The minority, concurring opinion, however, is far more instructive, pointing out that his two colleagues on the appellate court bench missed a bet by not correctly analyzing the legal justifications for a *Chimel* search.

Given the lack of any state appellate authority on the issue, the Summers concurring opinion tracks a series of federal decisions that clearly set out the correct legal analysis. Specifically, a search incident to arrest is lawful when:

1. The area searched was an area under the arrestee’s immediate control when he was arrested, and
  2. Events between the time of the arrest and search did not render the search unreasonable.
- This two-part test takes into

account the practical necessity of securing the scene and making it safe before the officer turns his attention to the lesser important task of searching.

The Anaheim officers would likely have found it extremely impractical, and potentially hazardous, to look under Summers’ pillow while he was still lying in bed, rather than waiting until they could get him up, handcuffed, and out of arm’s reach. To argue that the officers lose their right to make a search incident to that arrest

because they chose the safer avenue of first securing the prisoner and the scene, would be telling them to take unnecessary chances with their own personal safety; something we do not want to do.

As already indicated, the Summers minority opinion is based on a number of federal court cases. In one such opinion, where a search was delayed while the suspect was arrested and taken to another room, returning to the room in which the arrest had occurred some five minutes earlier and conducting a search of the immediate area was held to be a lawful *Chimel* search. Recognizing the hazards, the court noted; “(I)t does not make sense to prescribe a constitutional test that is entirely at odds with safe and sensible police procedures.”

To figure out what the courts mean in the second prong of this two-part test when they refer to “events” which might “render the search unreasonable,” we must again look back to the justifications

for a search incident to arrest; to prevent the grabbing for a weapon or the destruction of evidence. In this regard, *Chimel* requires such a search be “contemporaneous in time and place” with the arrest; i.e., that it be conducted then (or closely thereafter) and there. If an arrest is used to justify a warrantless search at some distant location, or after an unjustifiable delay in time, it cannot be rationally argued that the search was necessary to prevent the arrestee from grabbing for a weapon or destroying evidence. Such a search is therefore unreasonable.

Richard Summers was arrested in his bed, which was searched as he was being led out the door, with the shotgun being physically removed about 10 minutes later. This search clearly meets the two-part test as described above.

Note that searches incident to arrest, authorizing a search of the area within the arrestee’s immediate reach, necessarily include any containers such as purses, bags or briefcases which are either carried by, or at least within reach of, the person arrested.

**Vehicle Searches**

So far, we’ve only been discussing searches in a residence or some other type of building. The same rules, however, apply equally to searches incident to an arrest that occur in a vehicle. When a subject is arrested in his or her vehicle, the United States Supreme Court has held that the entire

passenger area of the car is subject to a *Chimel* search incident to that arrest. This necessarily excludes the trunk and any other area not a part of the passenger compartment.

A *Chimel* search within a vehicle includes any containers found within the passenger area of the vehicle, including the glove box and center console. It is irrelevant that a particular container, such as a purse or jacket, does not belong to the person arrested. And, as within a residence, the officer does not lose his right to conduct such a search of the vehicle merely because the arrestee has been removed from the car, handcuffed, and placed in some safe place such as the back seat of the police car.

So what happens when you arrest your crook while he’s kicking back with his homies after a hard day of smoking, doping and

thieving, downing a couple of brews in a parking lot while standing next to his car? What are the limits in this situation?

Clearly, his person can be searched incident to the arrest. But you need not stop there. The few cases that have addressed this issue tell us that if you catch him standing outside, but next to or close by his vehicle, so long as his car is within his “lunging area” when he’s arrested, you can still search the passenger area of that vehicle.

**Non-Custodial Arrests**

The final *Chimel* issue deals with the arrestee who is not transported; i.e., the “non-custodial” arrest. Again, the courts have spoken.

While any arrested person who is to be taken to the station or jail is clearly subject to a full field

search under *Chimel*, the same concerns are just not present when the person is to be released at the scene.

Although various courts have given varied reasons, the bottom line is that a person who is to be merely cited and released at the scene is not as likely to feel the need to reach for a weapon, nor to try and destroy hidden evidence. Any concern, therefore, that he might lunge for a weapon or try to destroy evidence is not strong enough to overcome the subject’s

privacy interests, and searching him or the area within his immediate reach, at least under a *Chimel* theory, would be illegal.

Of course, if an officer develops probable cause to believe the subject is holding seizable evidence, or is secreting an offensive weapon, then a search or pat down may be justified under the law applicable to that type of situation. A discussion of probable cause searches, however, must await a future article.

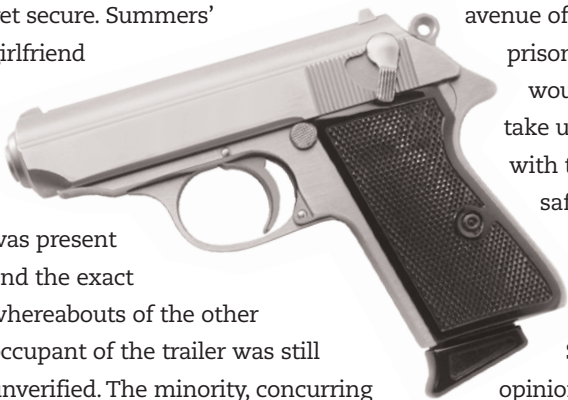
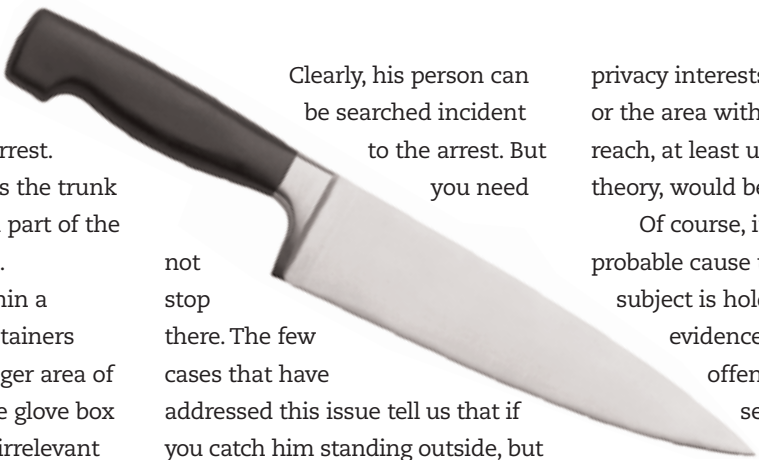
There is some authority for the proposition that so long as an arrest and transportation of the prisoner is legal, based upon an analysis of the law of probable cause and any applicable statutory restrictions, it is irrelevant that the officer’s decision to transport the prisoner is made solely to justify a search incident to that arrest.

**Conclusion**

When you think about it, a *Chimel* search incident to an arrest is a powerful tool for law enforcement, allowing for the warrantless intrusion, without probable cause, into areas otherwise protected by a person’s right to privacy. As such, its use must be exercised reasonably and only in those circumstances and for the purposes it was intended. The Constitution only requires us to act reasonably.

Robert Phillips is a Deputy District Attorney and liaison to the Sheriff’s Department and the Carlsbad, Escondido, El Cajon, La Mesa and Oceanside police departments.

To receive a version of this article with footnotes and cases citations, please phone (619) 531-3536.





by Gayle Falkenthal

# Underwater Search & Recovery Team: A Passion For Diving And A Desire To Serve.

*Q: Where can you ice dive in San Diego County?*

Forget all those action packed TV shows about cops. Most police work involves the down and dirty stuff. For the San Diego Sheriff's Department Underwater Search and Recovery Team, down and dirty doesn't even begin to describe it.

The down? Try being fully immersed into a septic tank serving three rural schools, looking for a bag of dumped evidence from a series of burglaries. The dirty? Reserve Lieutenant Randy Siegel delicately put it this

many bodies of water throughout San Diego County.

The team is called on to investigate crime scenes, conduct evidence searches, respond to emergencies involving natural disasters, and to retrieve the bodies of drowning or water-related accident victims. All the principles of land-based law enforcement work preserving and collecting evidence apply underwater for USAR.

limited access wilderness diving in waterfalls and pools, boat diving, night diving, contaminated water diving, zero-visibility diving, cold water and ice diving, and yes, the occasional septic tank.

Reserve Commander Mike Downs, who's been with USAR almost since its formation, notes, "When you put all these things together, it's every challenge faced by every dive team in the entire country. All the public safety dive problems, we've got them all. That's what

after hitting two or three thousand. Two to three hundred dives per year isn't unusual.

The team routinely practices the skills used most often in actual operations: search patterns, evidence and body recovery techniques, natural and compass navigation, zero-visibility diving and rescue diving. USAR conducts exercises with other San Diego County law enforcement and rescue agencies. Many of them have limited diving personnel and must rely on USAR. "We try to work with them all, so that in a real situation which may have time pressure and be stressful, we're already used to working with everyone. It's a terrific challenge," concludes Commander Downs.

While these elite divers seem completely at ease during assignments, they never take any situation for granted. Safety is always first. The divers display the grace of athletes who have practiced a skill over and over. Despite their experience, the team discusses details carefully during a pre-dive briefing, and always hold a post-training or post-operation briefing. Every member of the team participates fully in these discussions.

Lt. Siegel, USAR's unit commander, is a former NYPD patrol officer. He learned to dive in rough Atlantic waters. His governing principle for the team is that no one dives unless they want to. No questions asked, ever. Depending on the type of assignment, Lt. Siegel will suggest different team members to do the job. The one sacred rule, says Lt. Siegel, "I won't ask team members with children to do a recovery of the body of a child who has drowned."

Jerry Reid, who has recovered more evidence and more drowning victims than any USAR team member over his 10 years, tries to explain the unique ability to go where no other diver would choose to go: "Some people are afraid of snakes, even harmless ones, and some aren't. It's just ingrained in you. The same principle applies to recovering evidence from dive operations. Some people would be traumatized. I didn't know whether I would be or not. But I wasn't. Zero visibility



Diver uses body bag to recover evidence.

way: "We found the obvious things. We don't have to go any further."

The San Diego Sheriff's Department Underwater Search and Recovery Team (USAR) is the largest volunteer team of law enforcement divers in the United States. Thirty men and women serve on call 24 hours a day to handle search and recovery missions within the



## History of the Team

Although the San Diego Sheriff's Department has always relied upon deputies who happened to be divers, a team was formed in 1982. The team was part of the Special Enforcement Detail (SED). Eventually it made more sense to bring together a group of highly experienced divers who could train regularly. It also made sense to teach divers the law enforcement skills needed for the job instead of expecting deputies to acquire advanced diving skills gained only through hundreds of dives in varying conditions. USAR became a permanent reserve unit under Search and Rescue in 1995.

## Diverse Conditions Demanding for Divers

Working in the most varied diving conditions in the United States while keeping its entire arsenal of skills sharp is USAR's biggest challenge. USAR divers tackle salt and freshwater diving, swiftwater and surf diving,

makes it so exciting."

The average diver's idea of excitement isn't diving into black water in unpleasant circumstances. USAR divers thrive on the personal challenge of putting their skills to the test while doing vital law enforcement work. Ruth Harrison, one of the team's few women divers, is a San Diego Police Department dispatcher. Her co-workers, who are used to the worst in human behavior, think "I'm crazy. 'How can you touch a dead body?' But I am either helping put a bad guy behind bars, or helping a family during a tragedy. It helps to think that way."

Team members range in age from early 20s through early 50s. All are experienced divers with the most advanced certifications and training available. USAR boasts diving instructors, divemasters, and dive rescue specialists. USAR requires diver to have a minimum of 100 dives, 25 percent of which must be night dives. But many USAR team members stopped logging their dives

Photos by  
Dan Auber





helps. You don't see much.”

That's zero visibility on a good day. Unlike the photos of divers thrilling to brilliant fish in gin clear water, USAR divers consider themselves lucky if they can see their hand in front of their own mask.

Imagine searching for evidence like a gun in these conditions. Lt. Siegel likens these conditions to being “as dark as standing in a room with the lights off and your eyes closed.”

### War Stories

Perhaps only fishermen rival scuba divers in their love of telling “fish stories.” USAR members are no different, but it would be hard for any of them to exaggerate the truth about some of the situations they've faced.

In 1998, the team was asked to look for a .45 caliber Sig Sauer tossed into Oceanside's Guajome Lake by an attempted murder suspect. Reid says he could stick his hand straight down into the muck deep as his shoulder. The water wasn't much clearer than the goo.

Divers spent the morning searching with no luck. Although the suspect told detectives where he was standing when he threw the gun in, who knew where it landed? How could they figure out where to look in the large, murky lake? One of the divers suggested that the the gun weighed about the same as a full 24-ounce water bottle.. Then, it just clicked. The tallest, strongest member of the team, firefighter Dave Alexander, heaved a filled bottle from the same place into the lake as far as he could. They would work their way toward that point as the farthest possible location.

Diver Eric Geerdes was next in. “There was no visibility. I might as well have closed my eyes.” As he swept with a hand over the silt, anything foreign would

feel very hard. Sure enough, he hit something. He stopped and felt it. It turned out to the butt end of the gun, which had gone in muzzle first, and almost sank in all the way. About 1-1/2” was sticking out. “When I felt it, I realized it was the handle of the gun. We were lucky.” The water bottle was lying right by the gun. Alexander had almost hit it.

Deputy District Attorney Kate Flaherty praised the efforts of USAR in locating the weapon. “I appreciate this competent, solid police work. It fills in what would otherwise be a huge gap in the chain of actual evidence.

With the number of police shows on TV these days, juries expect to see the weapon, no matter what the officers have to go through to get it. The jury will not be disappointed by the story they hear from members of the SDSO Dive Team.

As with the well-known recovery efforts for John Kennedy Jr.'s airplane and the wreckage of TWA 800, USAR has been asked to recover pieces of aircraft. In August 1997, the divers were asked by the NTSB to look for the engines, propellers, and transmission of a PBY-5A Catalina skimmer that crashed into the San Vicente Reservoir while scooping



*A: San Diego USAR members do their annual ice dive in February at Doane Pond, located at 4,646 feet on Palomar Mountain.*

### USAR Divers Training includes:

Airborne deployment of divers and gear

Boat and shore based searches

Body recovery

Climbing and rappelling, with/without dive gear

Cold-water/Ice diving

Communication

Compass and Natural Navigation

Contamination Diving

Deep Diving

Diving Physics

Emergency Medical Training

Evidence Handling and Preservation (water/land)

Firearms Training

Fish and Game Enforcement

"Hard-Hat" Diving

Hazardous Environment Diving

High Altitude Diving

Night Diving

Recompression Chamber Use

Rescue Diving

Search Management

Surf entries, exits, and rescues

Surface-supplied air and communication systems

Swift water search and rescue

Underwater investigation

Underwater Remote Operated Vehicle (ROV)

Underwater search patterns

Underwater weapon recovery

Vehicle accident investigation, lifting & recovery

Vessel searches

Wreck diving

Zero-visibility operations

water for firefighting. On impact, the props sheared through the fuselage and severely injured the pilots. The U.S. Navy searched with sonar, but USAR succeeded the old fashioned way, conducting a grid pattern search. Divers found a prop and gears, brought them up with lift bags and used the whole team to push the 500-pound object to shore.

### Team Members

Some USAR team members are in allied professions, including four San Diego Police officers, two firefighters, a Navy SEAL, retired police and military. Other USAR divers are like Superman's Clark Kent: mild-mannered professionals such as computer programmers, engineers, a biotech marketer, cultural anthropologist and an attorney before transforming member Ken Corben of Encinitas, is an inter-national adventure documentary filmmaker with a growing reputation. His productions have appeared on The Discovery Channel.

This bunch might have only one thing in common: a passion for diving and the desire to serve their community. One of the divers, Jerry Reid simply states, “I wanted to do something useful with my diving skills.”

Another, Ted Thompson, a San Diego native who actually learned to dive in the lakes and bayous of Louisiana while in the Army, recalls joining because “I wanted to take my skills to the next level while helping people – and they had cool toys!”

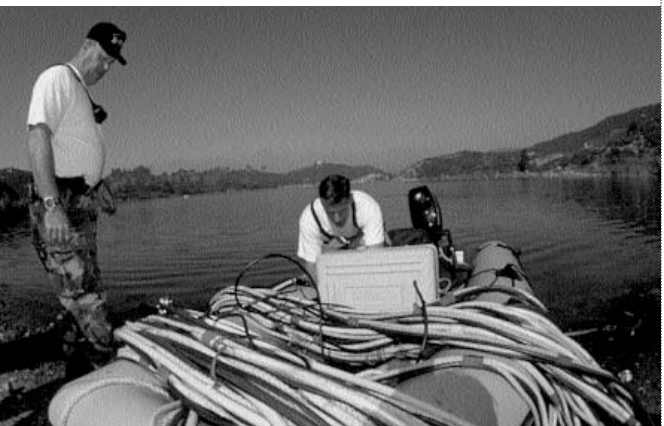
Reserves have to truly love police work to suffer all the heartache, and USAR members are no different. Lt. Siegel says, “We're all volunteers. It's supposed to be fun. It's serious and important, but it's supposed to be fun.”

As long as there's a chance to help someone, log another dive, and file another story away, USAR members have no intention of getting out of the water.

LEQ



Gayle Falkenthal is the Public Affairs Director for the San Diego County District Attorney.





San Diego police officers arrested a suspect for possession of drugs with intent to sell. The suspect rolled over on his own brother as his supplier. The brother was on probation with a Fourth Amendment waiver, so patrol officers went to the brother's residence. Officers knocked on his door and demanded entry, but he slammed the door in their face and retreated into the residence.

The officers forced entry and were confronted by two charging Pit Bulls. Fearing for their safety, an officer shot and killed one of the dogs.

At a subsequent hearing, officers testified that gangsters and drug dealers in the mid-city area commonly used Pit Bull dogs as weapons to delay police in making an entry.

The elements of this case are familiar to anyone



by James Treece

lifestyle. Gang members are drawn to their muscular build, their incredible strength, and their tenacity. The dogs become extensions of the gang member's machismo.

On one occasion, a SDPD narcotics detective was chasing a suspect after an undercover drug purchase when he was confronted by three snarling Pit Bulls. As he slowly backed off, he tripped over a bicycle and landed flat on his back. The dogs lurched toward his feet and groin but he managed to fire a single round from six inches away, striking one of the dogs in the chest. The dog dropped momentarily, then got up, shook it off, and ran away with the other dogs. The detective was incredulous and, for a moment, wondered if his 9mm had actually discharged. The dog was treated by a veterinarian and survived.

Richard Stratton, a Pit Bull proponent and a very knowledgeable writer on the subject of dog fighting, noted in his book *The World of the American Pit Bull Terrier* "a Pit Bull is quite capable of fatally injuring a large and robust man." Of course, the same is true of Rottweilers, Rhodesian Ridgebacks, Akitas, German Shepards, Doberman Pinschers, or any large dog.

Pit Bulls are commonly used to guard gang drug stashes and/or transport narcotics. SDPD gang detectives acknowledge that some gang members are transporting concealed weapons and narcotics while walking Pit Bulls. Reportedly, the word among gang members is police will not contact them while they are walking the dogs. And, some officers may be reluctant to initiate field interviews in such a situation.

San Diego investigators tell of local motorcycle gang

In addition, law enforcement and animal control agencies around the country have reported an escalation in street fighting of Pit Bulls. Street fighting is a highly visible component of neighborhood violence and can have a dramatic impact on neighborhoods. People who may not feel threatened by the presence of clandestine drug deals or prostitution in the area may feel seriously threatened by young men with dangerous and often poorly controlled dogs on the same street.

Dog fighting is a felony in 43 states (including California) and a misdemeanor in the seven remaining states. Other crimes, such as gambling and assault, are frequently associated with dog fighting. Illicit drugs and weapons at dog fighting contests are common. According to a federal prosecutor and several drug enforcement agents, major drug networks involving marijuana and

*Pit Bull is a generic term referring to one of three breeds, or mixes of these breeds: the Staffordshire Terrier, the American Staffordshire Terrier and the American Pit Bull Terrier.*

*Once considered a family and farm dog, the Pit Bull was often depicted in advertisements early in this century. RCA, Buster Brown and Levi Strauss all used the dog as their mascots to symbolize strength, bravery and loyalty.*

*These qualities have also made it the dog of choice for drug dealers, gang members and dog fighting aficionados. Opportunists are breeding aggressive qualities because of the profit potential.*

## A NEW PROBATION CONDITION THAT COULD SAVE YOUR HIDE

involved in law enforcement. During the first six months of 1998, San Diego Police reported 20 dog shootings by police officers; 11 of which resulted in a fatal injury to the dog. Most of the shootings were during the execution of search warrant or probation searches.

In 1998, Los Angeles Police Department reported an overall decrease in use-of-force incidents with the exception of dog shootings. In 1993, only 8.8 percent of all officer-related shootings in Los Angeles involved dogs, compared with 44 percent of all shootings during the first nine months of 1998.

Now, however, officers in San Diego County have a

new tool to combat the threat of dangerous dogs owned by gang members and drug dealers. County Animal Control, with the cooperation of the District Attorney's Office and the Probation Department, has initiated a process that can deny gang members and drug dealers possession of Pit Bulls or other potentially dangerous dogs.

### Pit Bulls: Breed De Jour

Ownership of Pit Bulls has increased especially among juveniles and gang members in inner city settings. Since violence is a way of life in the gang sub-culture, aggressive Pit Bull dogs are a natural progression of the

members stashing their drugs beneath the doghouses of their Pit Bulls. There have also been instances when Pit Bulls were used in armed robberies, in effect taking the place of a weapon. In one case, a 16-year-old girl was raped by a man who allegedly threatened her with his two Pit Bulls.

SDPD spokesman Bill Robinson reported that "many drug dealers have dogs to warn them of approaching customers or police. Narcotics detectives find mean dogs at most residences where (there are) drug dealers. They use them for protection, or as weapons when necessary."

methamphetamine trafficking have been tied directly to animal fighting in several states.

### Precedent Established for Dogs as Weapons

The American Law Review (7 ALR4th 607) cites several cases where dogs were used as a deadly weapon. Many of the cases cited involved attacks on police officers.

For example, in *People v. Garraway* (589 N.Y.S.2d 942) police officers testified they responded to a complaint regarding a loud party at the defendant's apartment and asked the defendant to turn down the music. After refusing the officer's request, the defendant shouted,



Pit Bulls

“get King” and was handed a leash with a Pit Bull weighing 65 to 75 pounds and about 30 inches tall. The defendant then yelled at the Pit Bull and slapped its backside with his right hand, which caused the dog to become increasingly agitated. The dog then began barking, growling and lunging at the two police officers who were standing a couple of feet from the animal. As officers backed away, drew their service revolvers and pointed them at the Pit Bull, the defendant stated, “it will take you at least six of those to stop him.”

In this case, the appellate court affirmed a conviction of criminal possession of a weapon and menacing. The court noted the defendant caused the animal to growl and lunge at the officers while being restrained only by a leash, which the defendant held and could release at any time, potentially causing serious injury to the officers.

In *People v. Nealis*, (232 Cal.App.3d Supp 1), the California Court of Appeals upheld a conviction for assault with a deadly weapon that involved the siccing of a Doberman pinscher.

In its decision, the court noted that “a dog may come within the definition (of a deadly weapon) if it is trained to attack humans on command or will follow such a command without training, and if it is of

sufficient size and strength relative to its victim to inflict death or great bodily injury.”

Legal Limits on Dog Ownership

Clearly, it is inconsistent to allow crooks who can be prohibited, as a term of probation, from possessing “a firearm or deadly weapon” to lawfully possess a dog that can be used as a weapon.

Probation and prosecutors should recommend that any dog weighing more than 20 lbs. (and therefore with the potential to be used as a weapon) be routinely prohibited as a condition of probation in gang and drug-related cases.

Street cops should articulate in reports any ownership of any dogs and detail any threat or interference experienced by the officer or anyone else.

The first use of this probation condition in San Diego involved a member of the Crips gang. According to the defendant’s probation report, San Diego police officers trying to serve a

warrant found the residence “heavily fortified” and “a large pit bull was kept at the house.” After this incident, a probation condition specifying that he was “not to own, possess, or use a dog that exceeds twenty pounds of weight” was imposed by the court and uncontested by the defense.

If a probationer with a condition not to have a dog larger than 20 pounds is found to be in violation of that restriction, police should contact Animal Control. An animal control officer will confiscate the dog, verify and document its weight, and hold it for evidence in a probation revocation hearing.

This process can provide law enforcement still another tool in the fight against drugs and gangs. The end result will make the job will be a little easier and a little safer for everyone. **LEQ**



Lt. James Treece is the supervisor of an investigative unit within the San Diego County Department of Animal Control specializing in the identification and abatement of dangerous dogs. Contact him at (619) 595-4538.



Photo by Scott Linnett



The recent shooting of children and staff at a Los Angeles Jewish Community Center by a neo-Nazi focused the nation on the dangers of hate crimes.



Photos from Associated Press. Photo on right from Los Angeles Times.



HATE CRIMES  
PROTOCOL: THE  
NEXT STEP

by Hector Jimenez

San Diego’s Response

The San Diego Law Enforcement community is attacking hate crimes with a unified front. Recently, a subcommittee of the Hate Crimes Community Working Group, composed of local and federal law enforcement professionals and Anti-Defamation League Director Morris Casuto, embarked to bolster law enforcement training and response to hate crimes.

This subcommittee developed a proposal for a Countywide Hate Crimes Protocol. Members of the subcommittee then shared their ideas with members of the San Diego Police Chiefs and Sheriff’s Association, who then approved and adopted the protocol.

Tenants of the Protocol

The protocol recognizes that “hate crimes attack the basic values of American society by targeting the right of every resident to live safely and freely. It is vital that all members of the public safety team recognize the impact of these crimes on the victims, their families and our community.”

With this mission in mind, the members of the Police Chiefs and Sheriff’s Association “agreed to focus

The barbaric murder of a student in Wyoming, a father dragged to death in Texas, a killing and shooting spree by a neo-nazi in Illinois, the fire bombings of places of worship in Sacramento, and most recently the murder of a postal worker and the shooting of children at a community center in Los Angeles; these are the latest hate crimes to gain national attention. Recent hate crimes in San Diego include the throwing of a teargas bomb during the Gay Pride parade and a brutal attack that left a young Marine a quadriplegic for life.

None of these victims were targeted because of their behavior toward the suspect or for financial gain. They were targeted because of what they look like, their sexual orientation or their religious beliefs. These hate crimes not only hurt individuals, but they terrorized communities.



agency administrative, investigative and enforcement resources toward eliminating hate crimes through enforcement, in-service training, victim assistance and community crime prevention efforts."

The agencies committed to provide regular hate crimes training. They also designated individuals to collect, review and analyze hate crime data in order to assist in pattern analysis and aid in the prosecution of hate crimes. (See sidebar)

Further, for the first time, "hate incidents" will be documented and recorded on an ARJIS 9 report. These are hate-oriented acts, such as passing out racist flyers in public property, yelling racial slurs and other non-criminal conduct motivated by a person's or a group's status. These ARJIS 9 reports will prove valuable if any of the suspects are later prosecuted for a hate crime.

Also included in the protocol is the prosecution of hate crimes. The District Attorney's office reaffirmed its commitment to prosecute every hate crime case aggressively and vertically.

Lance Corporal Carols Colbert with his mother in the hospital shortly after he was beaten by several white men at a party in Santee in 1998. Colbert, who was left a quadriplegic as a result of the beating, serves as an important reminder of the violence and tragedy of hate crimes.



Another subcommittee of the Hate Crimes Working Group established a victim/witness program to address the special needs of hate crime victims. A project director was recently hired to address the distinctive fear and stress typically suffered by victims of hate crimes, the potential for reprisal and escalation of violence, and the far-reaching negative consequences that hate crimes have on our community (see page 30).

Tragically, more members of our community and nation will become victims of hate. The San Diego County law enforcement community is unified and prepared to respond aggressively and systematically to deter potential offenders. In the meantime, however, we will fight the divisive efforts of those who aim to terrorize our community, and by working together and with the community, we will prevail.

LEQ



Hector Jimenez, a Deputy District Attorney assigned to the Special Operations Unit, handles hate crimes prosecution. His phone number is (619) 531-4221.

Although Steve (not his real name) is not gay, his neighbors recently blocked the entrance to his garage and began calling him derogatory names such as "faggot" and "queer." As he drove away in fear, one neighbor picked up a brick and threatened to kill him with it when he returned. Steve drove to a store and called the police, who promptly arrived and arrested the man. The man's mother began harassing Steve because her son was arrested and is now in jail. Although Steve could get a TRO against the neighbors, and police did what they could, Steve lives everyday in fear. He will probably move from the house he has lived in for the past 10 years.

Victims often feel helplessness, isolation, terror, confusion, emotional pain, and post-traumatic stress as a result of the crime. Hate crime victims are singled out because of certain characteristics they have no control over. Because of this, personal control and connection to society is instantly severed as the victim feels he/she has been singled out because of something that makes no sense to them.

Once a hate crime has been committed – whether it is a physical assault or vandalism – victims may have a varying array of emotions. Anything from anger to ambivalence over the situation is common. Some victims may feel or appear fragile, while others may seem as if they could handle anything.

The victim may have never thought that something beyond their control that could happen to them. Some victims say that after a hate crime incident, they no longer feel safe going out in public alone. They become distrustful of strangers and new situations.

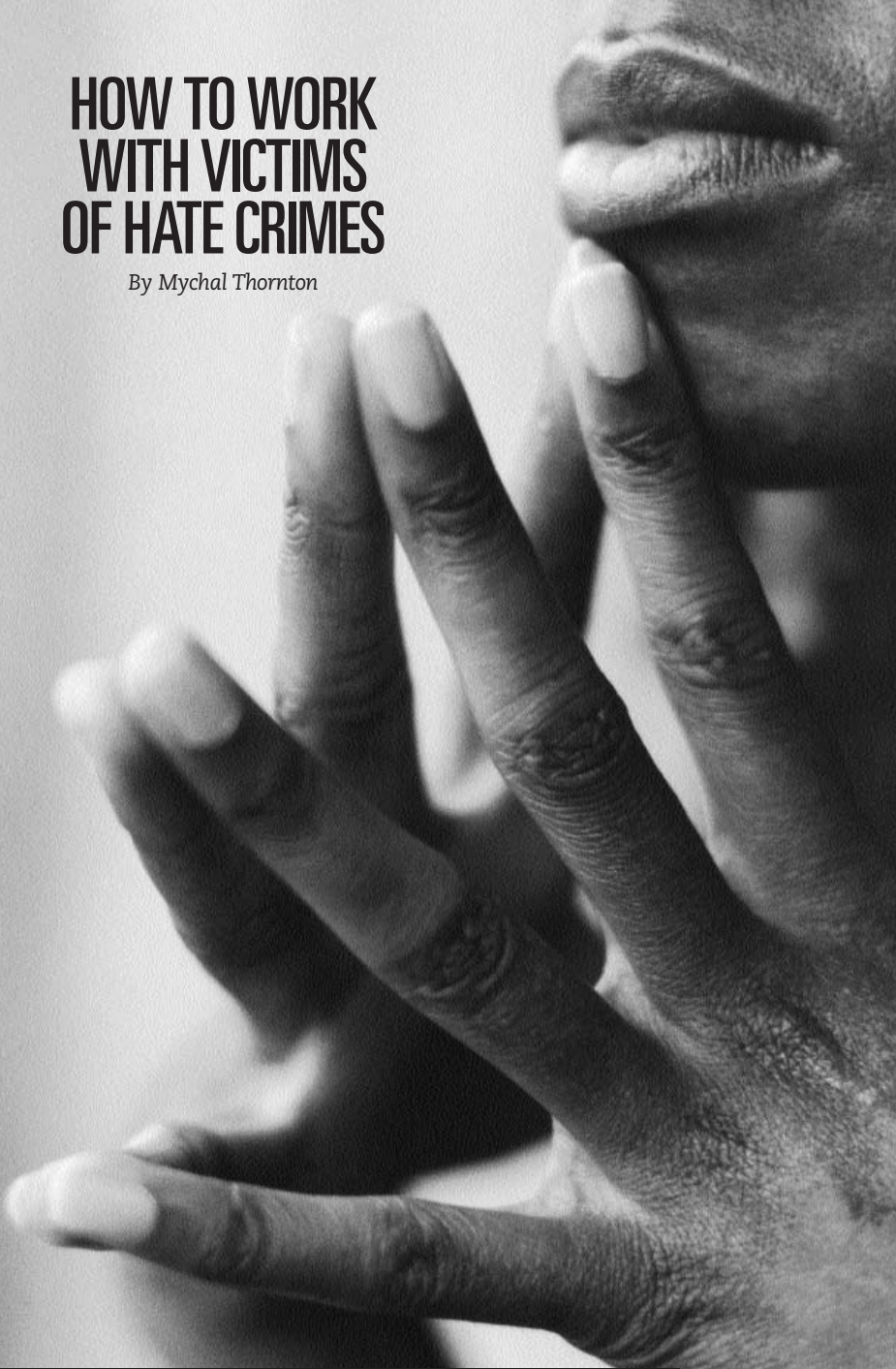
Serious personal financial loss can also be a result of hate crime.

In spite of this, many hate crime victims are still reluctant to come forward. There are many reasons victims do not report hate crime incidents. Fear of victimization or retaliation by perpetrators is common.

Feelings of humiliation and shame about being victimized are often overwhelming. Victims may also feel skepticism about the responsiveness of police and other justice system agencies. There may be cultural and language barriers. For undocumented immigrants, there is the fear of being deported. Gays, lesbians, bisexuals and transsexuals, may fear of being "forced out of the closet." They might be concerned about what an employer or a neighbor might say.

# HOW TO WORK WITH VICTIMS OF HATE CRIMES

By Mychal Thornton



## THE NEW HATE CRIME PROTOCOL WILL:

- Commit law enforcement agencies to vigorously investigate and prosecute hate crimes
- Provide training for line officers every 24 months
- Commit required department resources
- Outline procedures for dealing with victims of hate crimes
- Develop a system for recording and reporting bias incidents
- Develop strategies to prevent hate crimes.



*Hate Crimes: A Definition*  
A hate crime is any crime which is motivated, in whole or in part, by the victim's actual or perceived race, color, religion, ancestry, national origin, disability, gender or sexual orientation.

In working with victims of hate crimes, police and prosecutors should understand a crime has been committed against a person who may or may not feel comfortable in speaking with law enforcement.

Here are some suggestions that might help you when assisting victims of hate crimes:

- Allow victims to get a sense you are there to help and not to judge. They are trying to figure out if you can be trusted and if you are judging them because of what happened. If the victims trust you, they will give information more freely, which will ultimately assist you in your investigation.
- Carefully and calmly explain the investigative process and what law enforcement is going to do to help them. This gives the victims some time to regroup and calm down before they answer questions. It also gives you time to refer back to your instructions if the victims become confused or perplexed. If the victims

need medical care, be sure to ask if there is someone who can meet them there or call a Hate Crime Interventionist to assist them.

- If the offender is caught at the scene, try to safeguard the victims by assuring them of as much confidentiality as possible.
- Realize the victims may downplay the whole incident so as not to involve law enforcement or any other government agency.
- Evaluate their frame of mind throughout the interview process.
- Always give victims your name and number or a business card in case they need to get in touch with you or remember more details about the incident.

By their very nature, hate crimes are difficult to prove. For this reason, most go unsolved. The services you provide to the victim in the field are most likely going to be the only services the victim will receive from law enforcement. Therefore, the impression you make on the victim is critical to their healing process and other encounters with law enforcement.

LEQ



Mychal Thorton is a victim/witness advocate who works with hate crime victims for SDPD. She may be reached at the Anti-Defamation League at (619) 293-3770.

#### HATE CRIMES INVESTIGATIVE TEAM

California Highway Patrol  
Carlsbad Police Department  
Chula Vista Police Department  
Coronado Police Department  
El Cajon Police Department  
Escondido Police Department  
Federal Bureau of Investigation  
La Mesa Police Department  
National City Police Department  
Oceanside Police Department  
Probation Department  
San Diego County District Attorney's Office  
San Diego County Sheriff's Department  
San Diego Police Department  
San Diego Port District, Harbor Police  
University of California Police Department

Sgt. Patricia Arvizu (619) 401-2000  
Det. Agustin Jones (760) 931-2142  
Det John McAvenia (619) 691-5285  
Sgt. Jeff Hutchins (619) 522-7364  
Det. Walt Miller (619) 579-3332  
Det. Dave Sparks (760) 839-4771  
S.A. Mike Nicochea (619) 874-5144  
Det. Dan Willis (619) 667-1437  
Det. Randy Bishop (619) 336-4460  
Det. Tom Morgans (760) 966-7991  
Jerry Gerard (619) 694-4401  
D.A.I. Pat Espinoza Sr. (619) 531-3641  
Det. Bob Baker (619) 495-5634  
Det. Phil Cooper (619) 531-2518  
Sr. Off. Todd Rakos (619) 786-6512  
Sgt. Bob Jones (619) 534-0445

## Protecting The Rights Of

# SEXUAL ASSAULT VICTIMS

By Catherine Stephenson

Perhaps you have heard horror stories of sexual assault victims who after suffering a brutal attack, have continued to be re-victimized by skeptical cops and uncaring prosecutors.

While there probably is some truth to these stories, they do not characterize the overall professional and compassionate approach that most law enforcement officers, including prosecutors, take in investigating and prosecuting sexual assault cases.

There are a few other things that are true:

- 1 Victims are generally not familiar with the criminal justice system aside from what they may see on television or in the movies.
- 2 Victims are too afraid or intimidated to ask questions, or the questions do not occur to them when they meet with us.
- 3 Victims are meeting detectives and prosecutors at one of the worst times in their lives.

There are many laws on the books intended to protect victims of sexual assault as they go down the long and often arduous path of the criminal investigation. One of these laws underwent a fairly dramatic transformation in 1997.

Photo from stock.

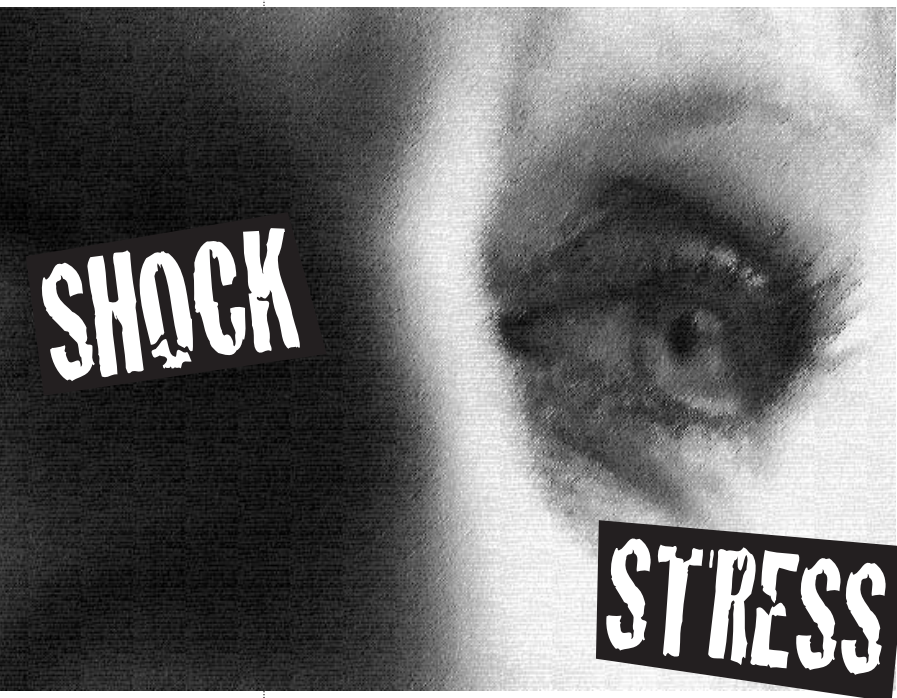


Right To A Victim Advocate

In October 1997 Penal Code section 679.04 was amended to read, “A victim of sexual assault...or spousal rape has the right to have victim advocates and at least one other support person of the victim’s choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys.”

Under the statute, law enforcement authorities and district attorneys are responsible for advising victims of those rights either orally or in writing before the interview.

Several changes were generated by this amendment.



First, prosecutors rarely dealt with the presence of advocates in victim interviews, let alone support persons. Second, law enforcement officers and prosecutors had to figure out the best way to notifying the victims.

After Penal Code section 679.04 was amended, several problems were identified that made the statute almost unworkable from the standpoint of many prosecutors and sex crimes detectives. The biggest challenge was and is dealing with the presence of support persons during the interview.

Many of us are used to working with trained sexual assault victim advocates who can provide tremendous help for the victim at all stages of the criminal process. But support persons were generally expected to provide moral support for the victim during courtroom testimony, not the pre-issuance interviews. Support people can be anyone of the victim’s choosing – from Aunt Tillie, to a

parent, or even the suspect! Think how difficult a spousal rape case might be if the uncooperative victim decided to have the suspect sit in on the victim interview!

Even more problematic was the parent who insisted on being present during a child victim’s interview. Sometimes the presence of the parent can be helpful but most of the time it is not. When the parent is present in the interview room, children are often extremely reluctant to discuss the details of the assault and the behaviors that preceded the assault.

In response to these concerns, Penal Code section 679.04 was amended again with the changes effective January 1, 1999. The statute has been re-worded to delete Penal Code section 288 – child molest – from the statute. Minors and adolescents, however, still come within the ambit of 679.04 depending on the crime involved. Today, Penal Code section 679.04 applies to the following crimes: Penal Code sections 261 (rape), 261.5 (unlawful sexual intercourse with a minor), 262 (spousal rape), 286 (sodomy), 288a (oral copulation), and 289 (penetration by an unknown object).

In addition, the statute in effect today gives the deputy district attorney or the law enforcement officer the authority to exclude the support person from the victim interview if “...the presence of that individual would be detrimental to the purpose of the interview.”

Support Persons

The presence of a support person during an interview with the detective and/or the prosecutor can go either way. It may be just the thing the victim needs to feel more comfortable and less intimidated. On the other hand, an overbearing or intrusive support person may derail the interview and frustrate everyone in the room including the victim. Each circumstance, each victim, and each potential support person is different and must be evaluated accordingly.

The following suggestions may help you decide whether or not to allow the support person into the interview. Keep in mind the ultimate goal is to create the best interview climate for the victim so he or she can and will be candid and forthright in his or her answers.

1. It is the victim’s choice whether the support person is present during the interview or not. Make it easier for the victim to make that choice. Take him or her aside and explain the right to have an advocate and a support person present during the interview. Then ask who, if

anyone, he or she would like to have present.

If the victim chooses not to have a support person, present you may want to volunteer to meet with family or friends after the interview to answer questions.

2. Victims need to make an educated choice about whether to have a support person present during the interview. Unlike the relationship with the rape crisis counselor, which is privileged, there is no support person privilege. The support person could be called as a witness – most likely by the defense – to testify about the victim’s statements and demeanor during the interview. As a witness to the interview, the support person’s name and address will need to be provided in discovery to the defense attorney if the case is issued.

Finally, if the support person is also a witness to the crime, then their presence at the interview could undermine their credibility. The defense attorney may later argue that the support person/witness sat in on the interview in order to get his or her story straight with the victim’s account.

3. If the victim chooses to have a support person physically present during the interview, lay down a few ground rules with the support person before the interview begins. The advocate can often help explain or reinforce these ground rules.

The first rule is that the support person is there only to provide moral support. Answering questions that are put to the victim is inappropriate. The support person may not use body language or words to suggest answers to the victim.

4. If the support person begins to interfere with the interview or it becomes clear that the victim is withholding information because of the presence of the support person, then the support person can be excused from the interview.

Encourage The Use Of Advocates

Penal Code section 679.04 also allows for the presence of a trained advocate during the victim interview. Sex crime investigators and prosecutors should take advantage of the special skill and training advocates can offer to victims. Advocates can be the critical link between victims and those of us in the criminal justice system.

For example, advocates understand the shock and the stress that victims experience after a sexual assault. In many cases, the advocate was present during the victim’s SART examination, so a relationship has

already been established.

Further, advocates can often help encourage reluctant victims to participate in the ongoing investigation and can answer questions about the judicial process.

And, the advocate will likely be there for the victim long after law enforcement’s involvement with the case is over. This is particularly important in situations when a criminal case is not issued. The advocate’s presence in the investigative interviews is an important part of the relationship that is being built with the victim.

Law Enforcement’s Responsibilities

Penal Code section 679.04 says “Prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a sexual assault, a victim of sexual assault...shall be notified orally or in writing by the attending law enforcement authority or district attorney that the victim has the right to have victim advocates and a support person of the victim’s choosing present at the interview or contact.” This responsibility also applies to District Attorney Investigators.

The statute goes on to clarify that the initial investigation by law enforcement to determine what crimes have been committed and the identities of possible suspects is not part of the “initial interview” of the victim.

What Penal Code section 679.04 really addresses is follow-up interviews by sex crimes investigators and prosecutors. Prior to these interviews, it is our responsibility to advise the victims. Further, it is also our responsibility to make some reasonable allowances to accommodate the victim’s wishes. The best thing to do is to speak to the victim about the options when the interviews are being set up. The victim then can have time to contact the advocate or the support person and notify them of the time and place of the interview.

There is one additional responsibility. Law enforcement officers and prosecutors must also advise victims that the right to have a support person and an advocate extends to interviews by the defense attorney or the defense investigator. Defense attorneys and their investigators do not have the right to exclude support persons from their interviews with the victim. **LEQ**



Catherine Stephenson, a deputy district attorney with 15 years experience, is chief of the Central Pretrial Division and is the chair of the Sexual Assault Response Team Systems Review Committee.



# UTILIZING CIVIL INJUNCTION TO COMBAT GANGS: PART 2

By Brian J. Whitbread  
and Susan Mazza



In the last issue of the *Law Enforcement Quarterly*, we told you how civil injunctions can stop crime and violence caused by gangs in specific neighborhoods. In this issue, we'll explain how to get a court order.

There's a specific process to obtaining an injunction. It's labor intensive, but straightforward.

## GETTING AN INJUNCTION: WHAT POLICE NEED TO KNOW

### 1. Identify the Problem

Gang detectives, specialized patrol (directed), or patrol officers assigned to a beat encompassing a gang area, identify the gang problem by talking to the residents or businesses within the target area impacted by the gang's activity. Talk to these witnesses where they feel most comfortable, in the neighborhood itself or perhaps in a neutral environment. Define the problems they're experiencing as a result of the gang in the neighborhood. Find out how their lives are affected as a result of the gang and the individual gang members. This could include excessive graffiti, or other forms of vandalism, or more serious conduct like intimidation, drug dealing, random shootings, assaults and even murder.

Also, talk to city or county workers who have direct contact with the gang neighborhood or gang members. They are a good resource to find out what is going on in the area. For example, many gang members hang out in neighborhood parks. Find out how the park workers have been affected. It could be endless painting over graffiti, harassment or intimidation to the workers. Utility companies and business owners are another good source to document vandalism to property such as utility poles, lights and businesses.

### 2. Identify the Gang Members

This second criteria ties active gang members to the problems associated with the target area. Complete and detailed documentation based upon California Department of Justice guidelines must be followed as a standard for identifying the active gang members. Document, document and document. This point cannot

be over-emphasized. Detailed reports such as arrest reports, crime reports, field interviews (F.I.s) and officer reports over a three to five year period of time should be researched and collected. This information will show how individual gang members have consistently affected the community over a defined period of time. It also can prove that an emergency exists in the target area due to the actions of these individual gang members.

In addition to active gang members, identify leaders or those individuals who have the most influence or power. Once this is done, run rap sheets on everyone targeted for the injunction. There is no limit. If you have 30 documented, active gang members causing problems, then you can name all of them in the injunction. You need the documentation, however, to prove they are a part of the problem.

### 3. Identify the Target Area

As with the first criteria, "Identifying the Problem", describing the target area is crucial. Gang injunctions are about neighborhoods. The court needs to know exactly where the neighborhood is. Once again, the key is documentation. Research crime reports, arrest reports, F.I.s and officer reports. Any reports that identify the target area and the associated problems are important.

Talk to other police personnel. Find out what they know about the problems and where the trouble spots are. Contact the gang members; find out where they hang out, where they live and what they do. You must come up with a defined geographic area. It could be a specific "problem" house or residence, a park, or an entire neighborhood.

### 4. Collect Evidence

This is the Declaration stage. After researching and collecting reports, identifying the gang and its members and leaders and talking to witnesses, it's time to write the declarations. The gang detective leading the

investigation as well as officers with knowledge or experience in dealing with the gang and its problems associated with it should write individual declarations – a key component in obtaining the injunction.

The real challenge is getting declarations from the people most impacted by the gang. The detectives or officers who have interviewed the residents or business owners within the target area should ask them to sign individual declarations. Prosecutors ask the court to seal citizen declarations so the gang members do not

see them. This is an important selling point in obtaining information from residents and business owners who are reluctant to talk to you. Only the judge reads their statements. The burden of testifying falls with the police officer, not with the victims who may be too intimidated to testify or to have their statements disclosed to anyone other than the judge.

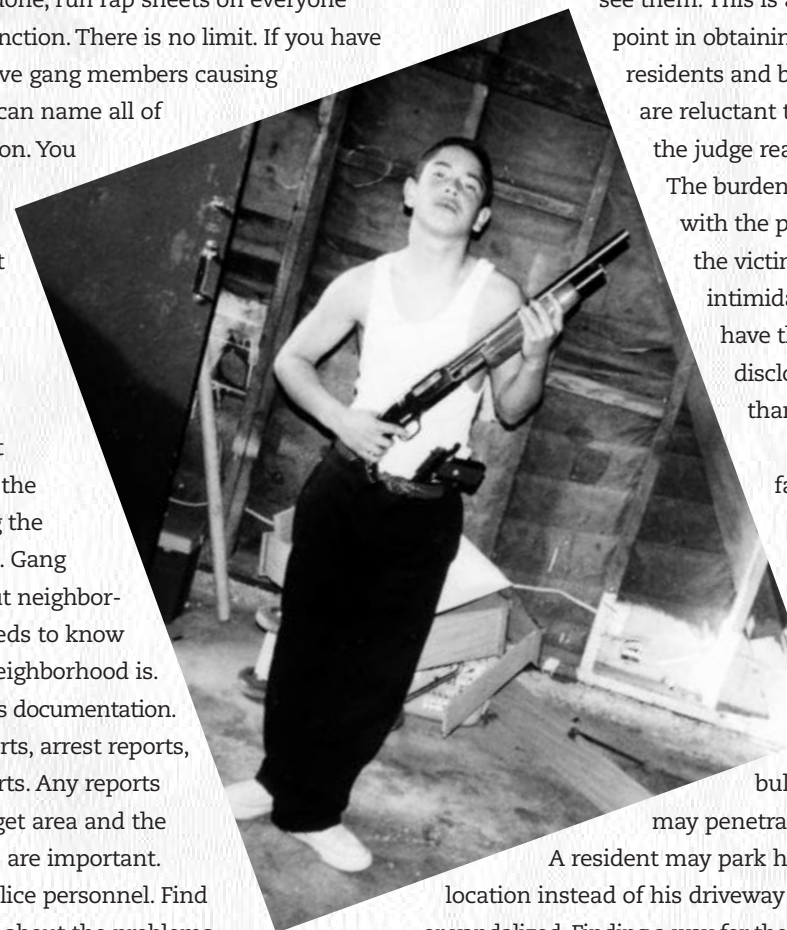
Take for example, a family living in a gang plagued neighborhood. As a precaution, the parents may have the children sleep in the bathroom tub out of fear that a stray bullet, fired by the gang, may penetrate the bedroom wall.

A resident may park his car in another location instead of his driveway so it won't be stolen or vandalized. Finding a way for them to tell their personal experiences and fears without being disclosed to the defendant(s) is an important factor in convincing these victims to cooperate.

The citizen declarations have been the single most important piece of evidence in convincing the court to grant an injunction. This is not to say that everything else required is superfluous, but judges have placed a lot of weight on the declarations. Citizen declarations are also a way for the victims of gang oppression to re-assert control over their neighborhood. It is empowering.

To augment evidence collection, create a visual

## Gang Injunctions





record. Include photos of the targeted gang members, photos of the target area and photos of other problems associated with the gang such as graffiti and other forms of vandalism. Video taping the gang is strongly recommended. Tape the gang during holidays such as Independence Day, Memorial Day or Labor Day. As we know, gang members love the notoriety and will usually perform for the camera by throwing “signs” and “claiming.” This is valuable evidence and should be collected whenever possible.

Other avenues of information on the gang and its members can be obtained through school and church officials, community activists, other gang experts, probation and parole officers.



Susan Mazza, a Deputy District Attorney assigned to the gang unit, handles abatements.

5. Prepare the Court Order

The burden of preparing the legal pleadings will fall upon the prosecutor, but nevertheless, the law enforcement agency seeking the injunction should assist.

You must decide what it is that the gang does that creates the nuisance and what you want them to stop doing. All the evidence you present should support this nuisance activity. You can’t have a laundry list. There has to be a connection between what is in your declaration and the declaration of the neighbors justifying what you asked for in

the order. The beauty of preparing this list is that it is unique to the individual neighborhood terrorized by the gang. What works for one neighborhood may not work for another.

6. Obtain the Court Order

The prosecutor can ask for both a Temporary Restraining Order (TRO) and a Preliminary Injunction to follow or just ask for the Preliminary Injunction. When the judge conducts the hearings, he/she has reviewed the legal pleadings and declarations. The evidence is usually all in writing. However, live testimony is sometimes requested. The lead gang detectives should be available to testify at the hearings if necessary.

7. Notification of the Court Order

Another challenge is notifying the defendants at each step of the process: before the TRO hearing; after the TRO hearing; after the Preliminary Injunction

hearing; and, after the final resolution. This is especially challenging when the court sets a very short time to serve the TRO and notice for the Preliminary Injunction hearing.

When service is required on juveniles, the parents must be served as well as the juvenile defendant. Personal notification to the defendants is preferred to eliminate future claims that they were not aware of the injunction. Notification forms or “Proof of Service” forms must be returned to the court clerk as the defendants are served at each step. None of the defendants can be arrested for violating the injunction unless they have actual knowledge of the court order.



Remember, when deciding who will serve the defendants with the notices, that when the defendant violates the injunction both the officer who served the defendant with the injunction and the officer who observed the violation will be needed to testify.

8. Final Disposition

The final disposition can either be a trial or, if no defendants have filed a response to the civil lawsuit, a simple hearing. Only one gang injunction in the state ended with a trial, *People v Varrio Posole Locos* (See LEQ Spring 1999). That case resulted in a Permanent

Injunction one and one-half years after filing the original lawsuit. The Preliminary Injunction stays in effect until the final disposition hearing/trial. When the injunction becomes permanent, that is exactly what it is, Permanent.

Enforcement And Punishment

Now that you’ve gone through the trouble of getting the gang injunction, what do you do with it? Enforcement is the only way to make the injunction effective. When defendants are seen violating the order they should be stopped. Whether you arrest them or cite them is up to

The Basic Steps Of  
Getting An Injunction

1. Identify the problem
2. Identify the defendants to be named in the injunction
3. Identify and describe the target area
4. Collect evidence
5. Prepare the order
6. Obtain the order
7. Notify the defendants
8. Final disposition: Trial/Prove-Up Hearing

your discretion. The usual format should be followed in writing the crime reports. The important elements are 1) the defendant is named in the gang injunction: 2) he had notice of the injunction; 3) he was in the target area; 4) he willfully violated a specific provision of the order.

Officers should be familiar with all provisions of the injunction. Remember that each violation is a separate count. So, if “Trigger” is in the target area with two other gang members, wearing a gang belt buckle, throwing a gang sign with graffiti tools in his pocket that is five counts!

It is helpful to have vertical prosecution of these cases for consistent charging and sentencing.

Conclusion

Police officers are trained to look for the most serious of crimes. To become involved in the injunction process and its enforcement, where the most you can achieve is a misdemeanor booking, may not seem like its worth the time and effort. But the statistics show that gang injunctions are definitely worth enforcing.

Enforcement, however, could raise some issues for a smaller police department without much manpower.

The successful implementation of a gang injunction mandates constant vigilance in the target area. No violation should be ignored. Support by police administration is key. When the injunction is initially obtained, personnel are made available to implement the restrictions. As time passes, however, manpower is often directed away from the target area. In order to make the injunction work the order must be enforced.

A gang injunction isn’t the answer for every community or police jurisdiction. Every neighborhood is different. Every attempt to use alternate resources available to a law enforcement agency must be exhausted before an injunction is sought.

Further, individual communities need to develop a follow-up strategy to the gang injunction. It doesn’t do any good to target 20 gang members and have 20 new “wannabes” follow in their footsteps.

With the success of some of Los Angeles’ injunctions and the decrease in crime, individual neighborhoods have been eligible for government grants to improve the neighborhood. The money awarded to these areas has been used for beautification projects, which in turn have increased property values. Activist groups such as the Urban League, clergy members, NAACP members, community members and other groups have become involved establishing job skill/life skill programs. These groups have helped the gang members and other youth develop the skills necessary to mainstream into society and obtain employment.

The use of the gang injunction is definitely part of the solution to stopping the neighborhood destruction caused by gangs. It is a unique, effective tool that’s slowly gaining momentum in the fight against gangs. **LEQ**



Brian J. Whitbread is a District Attorney Investigator.



COMMENDATION OF THE QUARTER

By Denise Walker Vedder, LEQ Editor

DEA Special Agent Allan Karas had only been on the job a couple of weeks. He was working undercover, driving along the I-805 freeway, when he noticed a car that appeared to be chasing another car. He watched in amazement as the car careened onto the shoulder of the road and the driver threw a bottle at the other car, shattering its windshield. Karas, who was in a pick-up truck, chased the driver off the freeway and then pulled in front of him, blocking him with his truck until local police arrived. As it turned out, it was a case of road rage; the driver who threw the bottle was upset because he felt an elderly man had cut him off in traffic.

This effort – going above and beyond the call of duty - is typical of Special Agent J. Allan Karas. According to his Group Supervisor Jack Delmore, Karas’ achievements on the job go beyond the required job performance. “He has far and away exceeded the expectations of an agent at his level,” Delmore wrote in a recent performance evaluation.

During a four month period from February 1999 to June 1999, Karas’ efforts produced 10 initiated cases, 31 defendant arrests, 3 lab cases and asset seizures of more than \$50,000. Karas’ tenacious work ethic has helped establish four documented informants that were instrumental in case initiations. As a result, the Narcotics Task Force Team he is assigned to led the entire San Diego Field Division in the number of arrests from October 1998 through March 1999, with a total of 66. This arrest total surpassed every group in the Division, the NTF and the Imperial County RAC office. Delmore attributes a significant number of those arrests to the productivity of Karas’ investigations.

“His work ethic and dedication to the DEA mission are the constant factors that have produced numerous case initiations and arrests credited to his group and the San Diego Field Division. Allan’s tireless effort has been inspirational to his peers and earned their respect,” he said.

One of Karas’ strongest attributes, according to Delmore, is his ability to develop solid working relationships with other agencies. Karas transferred to



San Diego from Washington D.C., where he grew up. “Normally, a transition like this would take an agent a year or so to get used to the environment and learn the personalities of different agencies. He learned to get along, where another agent could have had a problem,” Delmore said. "Allan was smart enough to develop a good rapport with the US Attorney’s office and the DA’s office. This is the key to making cases – and Allan caught on quickly, so he was able to hit the ground running. And his record is indicative of this.

“He has an exemplary record for a young agent. Allan is someone who really feels for his job and puts his heart and soul into it. He has a great future with the DEA, assessed by the work he’s done so far. He’s an outstanding agent at this juncture of his career and will no doubt continue in that caliber.”

Karas served with the beach patrol before joining the DEA. He signed up with the DEA because he wanted a career where he could have an impact on the killings and crime that he had seen growing up. “In D.C., we were at ground zero when the crack cocaine epidemic hit. So, I saw firsthand how drugs ruined people’s lives.”

“I really wanted to do something where I could make a difference. I guess I’m still a believer in the ‘good guys’ vs. the ‘bad guys.’ I believe, although some may call me naive, that my daily work is a challenge of good vs. evil,” Karas said.

For his exemplary work in putting dangerous drug dealers in prison, and getting drugs off the street, J. Allan Karas is the recipient of the LEQ’s Commendation of the Quarter.

LEQ

PROFILE IN LAW ENFORCEMENT

An Interview with Carlsbad’s Chief

Robert B. Vales, Chief, Carlsbad Police Department

Carlsbad Police Chief Robert B. Vales began his law enforcement career on July 1, 1964 in Palm Springs. “It was 120 degrees, with no air conditioning in the car. Today, that would have been a grievance,” he chuckles.

After a couple of years, he decided to turn up the heat on his career and joined the Walnut Creek, CA Police Department, where he spent 10 years, primarily working in narcotics and investigations. He then moved back to Palm Springs, opening a private security firm. “It was the best thing that ever happened – it made me realize how much I missed law enforcement.”

When Vales saw an opportunity to go to law school, he jumped at it, working the graveyard shift at Escondido PD and going to law school during the day. In 1981, a lieutenant’s job opened up at Carlsbad PD, and he decided to pursue that opportunity. Vales was promoted to captain in 1983, and appointed chief in 1987.

Quick to smile, and generous with his laughter, he says with all earnestness, “There’s not a day that doesn’t go by that I don’t appreciate my job and how fortunate I am to do what I do in this place and at this time.”

The city of Carlsbad has more than doubled its population in just 10 years. How has your department kept up?

We’ve been able to keep up with the growth and still provide a high service level because the city council has been very supportive. They understand that having a high service level costs money, but it pays huge dividends. So they have approved funding that has allowed the department to grow from 60 to 134.

Overall, Carlsbad has a low crime rate compared to other cities in the region, but there is enough activity to keep a good cop busy – we see a little of everything here.

I try to remind my officers that when people are not concerned about crime, that’s a good thing. It means we are doing our jobs. Quality of life centers on how safe you feel, not what the numbers say the crime

rate is in a particular community. If you are the victim of a crime, then the rate is too high.

How did you become interested in law enforcement?

Growing up, I was well acquainted with the local highway patrol. In spite of this, the officers were always polite and treated me well. As a result of my interaction with them, I decided I wanted to be a highway patrol officer. After attending college and then getting married, I still was not old enough – you had to be 21 to be a CHP officer. Fate works in strange ways because I would have been a terrible CHP officer – I hate traffic, and I don’t like working accidents.

How has the law enforcement profession changed since you became a cop 35 years ago?

Community policing has changed law enforcement dramatically. In the “old days” this work was looked upon as something for “do-gooders.” Now I have two officers dedicated full-time to community outreach, and that will continue to grow because community policing works.

Young people entering the force today are performing a higher level than we were expected to – they’re better educated and smarter than we were.

The cop on the street today is a master at conflict resolution and they get very little credit for how good they are at doing this.

What’s the same?

The really bad guys are still out there, and its our job to catch them and stop them. We don’t lose track of that.

Working in Palm Springs in the 1960s, did you ever have to bust a celebrity?

We had the usual trouble with Spring Break. I remember Jack Benny’s funeral and some sort of family beef that we had to break up at David Jansen’s house. LEQ

